

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/1981/2006 – SM[BR]

Date 01/12/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S DCM FABRICS

G-8 TO 11, INDL. AREA, PALI-MARWAR

M/S DCM FABRICS

C.C.E. JAIPUR II

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1566/ 2008 - SM[BR]** dated 26.11.2008
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.PRADEEP JAIN,CA

H-29,SHASTRI NAGAR,JODHPUR(RAJ)

3 S.D.R

4 ~~J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017

7 M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3

8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.

10 Nidheshak publications, I.P.Estate, new Delhi

11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagaraya Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, New Delhi - 110070

14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 1

15 Office Copy

16 Guard file


Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Excise Appeal No. 1981 of 2006-SM

[Arising out of Order-in-Original No. 851 (HKS)CE/JPR-II/2005 dated 15.12.2005 passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur]

Date of Hearing/Decision : 26.11.2008

For approval and signature:

Hon'ble Ms. Jyoti Balasundaram, Vice President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	yes

M/s DCM Fabrics

Appellant

Vs.

CCE, Jaipur-II

Respondent

Appearance:

Ms. Asmita Nayak, Advocate for the appellant

Mr. R.K. Saini, DR for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

Final Order No. 1566/08-SM(BR)

Per Jyoti Balasundaram:

The appellants herein are engaged in the processing of cotton fabrics falling under Chapter 52 of the first schedule to the Central Excise Tariff Act, 1985. By the Notification No. 25/2003 dated 25.03.2003, they were entitled to avail one time deemed credit on gray fabrics lying in their stock or in process or contained

in finished goods lying in their stock as on 31.3.2003 (subsequently changed to 01.04.2003). Relevant declaration was filed on 16.6.2003 which was beyond the last date for filing the declaration viz 15.6.2003. The Deputy Commissioner therefore disallowed the credit of Rs. 81,920/- and ordered its recovery together with interest and also penalty of Rs. 8,000/- on the appellants. This order was set aside by the Commissioner (Appeals) and the case remanded to the adjudicating authority who vide his order dated 11.7.2005 sanctioned claim of Rs. 81,920/- out of which Rs. 79,532/- was allowed as cenvat credit and the remaining amount of Rs. 2388/- was paid in cash to them. Hence, this appeal against the refund by way of cenvat credit.

2. I have heard both sides and perused the records. The issue in dispute as to whether the appellants are entitled to refund in cash. I find that in the case of Slovak India Trading Co. Pvt. Ltd., vs. CCE, Bangalore -2006 (205) ELT 956 (Tri. Bang.) the Tribunal has held that when assessee goes out of modvat scheme or when company is closed, refund claim can be made in cash and the Tribunal's order has been upheld by the Hon'ble High Court of Karnataka as seen from 2006 (201) ELT 559 (Kar.), holding that Rule 5 of the Cenvat Credit Rules, 2002 does not expressly prohibit refund of unutilized credit when there was no manufacture due to closure of factory. In the present case, the appellants have closed factory and surrendered their excise license and therefore the ratio of Slovak India Trading Co. Pvt. Ltd., ^{decision} applies on all ~~for~~ ^{for} ~~the~~ ^{the} following the ratio thereof, I hold that cash refund is admissible to the appellants, set aside the impugned order relating to refund of Rs.79,532/- by way of cenvat credit, and allow the appeal.

[Dictated and pronounced in the open Court]

[Jyoti Balasundaram]
Vice President

[Pant]