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**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/1241/2007 – SM [BR] Date 17/12/2008

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

To :
M/S JYOTI CAPSULES,
123/37, SARESH BAGH FACTORY AREA, KANPUR
(U.P.)

M/S JYOTI CAPSULES, Appellant
Vs
C.C.E. KANPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1600 / 2008- **SM[BR]** dated **8.12.2008** 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. KANPUR
   117/7, SARVODAYA NAGAR, KANPUR 208005.
2. Adv. / Consult
   MR.SADHU RAM, CONSULTANT
   HOUSE NO. 340/14, FARIDABAD
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 Publictions (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.
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12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
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Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No.2, R.K.Puram, New Delhi-110066.**
**Principal Bench, New Delhi.**

**E/1241/07-SM**

[Arising out of Order-in-Appeal No.07-CE/APP/KNP/07 dt.22.12.06 passed by the Commissioner(Appeals),Kanpur)

Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?
2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities: :

M/s. Jyoti Capsules — Appellant

Versus

CCE, Kanpur — Respondent

Appearance
Shri T.R.Rustogi, Adv. For Appellant
Shri S.K.Panda, Authorised Departmental Representative(JCDR) For Respondent

Coram: Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 8.12.08
Final Order No. 1600/08-SM(PB)

Per Rakesh Kumar:

The Appellant manufactured several medicines. One of the medicine being manufactured by them is fully exempt from duty under Notification No.6/02-CE dt.1.3.02 and the other medicines are dutiable. The exempted medicine is exclusively exported. However, the Appellant had taken Cenvat credit of credit of duty on the inputs which go into manufacture of dutiable as well as the exempted medicine and also on the inputs which are exclusively used in the manufacture of exempted medicine. The Asstt. Commissioner vide order-in-original dt.25.5.06 confirmed demand of Rs.2,60,626/- against the Appellant and imposed penalty of Rs.50,000/- under Rule 13 of Cenvat Credit Rules,2002, on the ground that in respect of clearances of the exempted medicine for export, the Appellant should have paid an amount equal to 8% of the value. The Asstt. Commissioner's order was broadly upheld by the Commissioner(Appeals) who held that in respect of clearances of the exempted medicine cleared for export, an amount equal to 8% of the price of exempted goods would be payable by the Appellant. It is against this order of Commissioner(Appeals) that this appeal has been filed.

2. Shri T.R.Rustogi, Advocate, Ld. Counsel on behalf of the appellant made the following submissions:

(1) The goods in respect of which the amount equal to 8% of the value has been demanded as per the provisions of Rule 6(3) read with Rule 6(2) of Cenvat Credit Rules,2002 have been exported out of India. As per the provisions of sub-rule 5 of Rule 6 of Cenvat Credit Rules, the provisions of sub-rule 1,2,3 & 4 shall not be applicable in case the exempted goods are either exported out of India under Bond or are cleared to a Free Trade Zone/ SEZ 100% EOU or to a unit in an Electronic Hardware/Software Technology Park. Since in this case the goods have been exported out of India, neither the provision of sub-rule (1) nor the provision of sub-rule (2) read with sub-rule (3) would be applicable.

(2) Tribunal's judgtment in the case of JOBELLE vs CCE, Mumbai reported in 2006(203)ELT.627 and also Tribunal's judgment in the case of CCE,Surat-II vs Nemlaxmi Book(I) Pvt. Ltd. reported in 2007(144)ECR.421

were cited wherein it was held that when the exempted goods were exported out of India, the refund of Cenvat credit of Duty on inputs and packing materials would be available.

3. Shri S.K.Panda, the learned JCDR pleaded that in this case the Appellant should have, from the very beginning, declared as to which finished products would be exported by him and which would be cleared for home consumption and separate inventory and account of the inputs to be used for goods meant for export and the inputs to be used for the goods to be cleared for home consumption should have been maintained and since no such declaration has been given and no such separate account and inventory has been maintained, after making clearances for export, the Appellant cannot claim for exemption from payment of 8% of sale value of the goods, as per the provisions of sub-rule 3 of Rule 6. He emphasized that when the Appellant knew that a particular finished product is exempt from duty, from the very beginning they should have maintained separate inventory and separate account of the raw-material to be used in manufacture of that product and since they have not complied with this Tribunal, they would be liable to pay an amount of equal 8% of the goods.

4. I have carefully considered the submissions from both the sides. In this case, the Appellant have availed Cenvat credit of duty on inputs used in the manufacture of medicin~~es~~ which is fully exempt from duty under Notification 6/02-CE and which had exported out of India and also in the manufacture of dutiable medicines. The Department seeks to recover an amount equal to 8% of the value of the exempts medicine on the ground that some common inputs in respect of which Cenvat credit has been taken, have been used in the manufacture of exempted ~~exempts~~ finished products as well as dutiable

finished products and separate account and separate inventory of the finished goods was not maintained.

5. There is no dispute about the fact that the item which is fully exempted from Cenvat Excise Duty under Notification No.6/02-CE is an "exempted goods" within the meaning of this term as defined under Rule 2(d) of Cenvat Credit Rules. Sub-rule 5 of Rule 6 clearly states that the provisions of sub-rule 1,2 & 3 shall not be applicable to the exempted goods exported out of India under bond without payment of duty. Since the goods, in question, are exempted goods and have been exported, the provisions of sub-rule 5 become applicable and therefore, neither sub-rule 1 would be applicable nor sub-rule 2&3 of Rule 6, this would be applicable. I am supported in this view by the judgments of this Tribunal in cases of Jobelle vs CCE, Mumbai(supra) and CCE, Surat-II vs Nemalaxmi Book(I) Pvt. Ltd.(supra). In view of this, the impugned order is not sustainable and the same is set aside. The appeal is allowed with consequential relief.

Order dictated and pronounced in the open Court.

(Rakesh Kumar)
Member(Technical)

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