

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/5834/2004-SM[BR]

Date 16/04/2008

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

To :
KISAN SAHKARI CHINI MILLS PVT.LTD.
NANAUTA , SAHARANPUR [U.P]

KISAN SAHKARI CHINI MILLS PVT.LTD.

Appellant

C.C.E. MEERUT I

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 636 /2008 -SM[BR] dated 23.1.2008
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. MEERUT I

EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.

2. Adv. / Consult SHRI VIKRANT KACKRIA ADV.

509 , SECTOR -7 , PANCHKULA [HR]

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 Delhi -

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), Thyagaraya Road, T. Nagar, Chennai 60017

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

14. Office Copy

15. Guard file


Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.5834 /200⁴-SM

(Arising out of order in appeal No.543/CE/MRT.I/04 dated 13.9.04
passed by the Commissioner of Central Excise (Appeals), Meerut-I)

For approval and signature:

Hon'ble Mr.P.K. Das, Member(Judicial)

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 should 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 Departmental authorities?

M/s Kisan Sahkari Chinni Mills

Appellant
(Rep. by Shri Vikrant Kackria Adcocate)

Vs

CCE, Meerut-I

Respondent
(Rep. by Shri S.L. Meena, DR)

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing: 23.1.2008

Final Order No. 636/08-SM(BR)

Per P.K. Das:

Heard both sides and perused the record.

2. The appellant filed this appeal against denial of credit for violation of various provisions of erstwhile Central Excise Rules, 1944 (in short 'the said Rules') which are discussed below:-

A) Credit of Rs.1,22,500/-:- The appellant availed credit on the basis of invoices wherein the job worker's name was mentioned. The Commissioner (Appeals) observed that in such cases, the appellant is entitled to avail credit if it is allowed by the Assistant Commissioner under Rule 57-T(7) of the said Rules. It is seen that Rule 57-T(7) of the said Rules provides that the manufacturer will be allowed to take credit on capital goods paid by a contractor or job worker who undertakes the job of initial set up, renovation, modernization or expansion on behalf of the manufacturer of the final product, subject to such procedure and conditions as specified are followed. The learned Counsel submits that the job worker or contractor endorsed invoices in their favour. Admittedly, the appellant had not followed the procedure under Rule 57-T(7).

3. I find that Rule 57-T(7) provides a procedure to allow credit on the invoices where duty paid by a contractor or job worker and therefore, compliance of the procedure is substantially required. Credit cannot be allowed on endorsed invoice. Therefore, denial of credit is justified.

B). Credit of Rs.1,49,046.13 :- The lower authorities observed that in this case, ~~of~~ job of extension was undertaken by the job worker or contractor on behalf of the manufacturer. The credit will be allowed by the Assistant Commissioner as provided under Rule 57-T(7) of the Rules. The learned Advocate drew attention of the Bench to the copy of invoices. It is seen that the invoices were issued in the name of the appellant and job worker or

contractor. The learned Advocate submits that the lower authorities had overlooked that the invoices were issued in favour of the appellant and therefore, they have rightly availed the credit.

I find force in the submission of the learned Advocate and it is required to be examined by the Adjudicating Authority.

C). Credit of Rs. 1,57,846/- :- It has been alleged in the show cause notice that the appellants cleared the damaged capital goods to M/s Triveni Engg Industries Ltd without reversal of the credit under Rule 57-T(7) during the warranty period. It has further been alleged that M/s Triveni Engg Industries Ltd supplied the capital goods to the appellants which shows that the goods supplied under the cover of invoice by the supplier and the goods supplied after rectification or replacing of the original goods which had been taken as damaged. Commissioner (Appeals) observed that the appellants received the new goods on payment of duty from the supplier. He also observed that modvat credit is admissible on the impugned goods. However, the appellant did not reverse the credit by clearance of the damaged goods and therefore, the Commissioner (Appeals) directed that the impugned modvat credit is admissible subject to reversal of modvat credit since there cannot be double credit on the same capital goods.

I have perused through the findings of the Commissioner (Appeals). It is seen from the Order that Commissioner (Appeals) held that the appellants received new capital goods under the cover of Central Excise invoice from the supplier. Therefore, there is no scope of availment of double credit on the same capital goods. The learned DR submitted that they were liable to reverse the credit at the time of clearance of damaged

capital goods under Rule 57-T(7) of the said Rules. To my mind, the revenue at best, ^{very little} made demand of duty on the clearance of the damaged goods cleared under Rule 57-T 'challan if it was not returned back. However, there is no provision for adjustment of credit against the clearance of the damaged goods and the receipt of new capital goods. Therefore, denial of credit of Rs. 1,57,846/- is set aside.

3. In view of the above, denial of credit of Rs. 1,22,500/- is upheld and credit of Rs. 1,49,046.13 is set aside and remanded back to the adjudicating authority for examination of the invoices and the submission of the appellant and denied credit of Rs. 1,57,846/- is set aside .

4. Regarding penalty, it is seen that the Commissioner (Appeals) has observed that there is no malafide to misuse the modvat facility. I find that when there is no malafide intention and the issue involved is interpretation of Modvat Rules, and the imposition of penalty is not justified. Accordingly, penalty is set aside. The appeal is disposed of in the above terms.

(Order dictated and pronounced in the open Court).

MPS*

(P.K. Das)
Member(Judicial)