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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/3831/2006-SM[BR]   Date 29/04/2008

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

To :
MAX INDIA LTD.
(MAXMET DN),
SCO 86-87, SECTOR 8C,
CHANDIGARH
160018

MAX INDIA LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 663 /2008 –SM[BR] dated 17.4.2008 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. CHANDIGARH
   PLOT NO. 19, SECTOR 17 C
   CHANDIGARH.
2. Adv. / Consult
   MR.V.SWAMINATHAN
   G-50, LAJPAT NAGAR-III, NEW DELHI-24
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 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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 3831 of 2006-SM

[Arising out of Order-in-Appeal No. 280/ 2006 dated 22.9.2006 passed by Commissioner of Central Excise (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

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. Max India Ltd. — Appellant

Vs.

Commissioner of Central Excise Chandigarh — Respondent

Appearance:

Mr. V.Swaminathan, Advocate for the Appellant
Mr. B.S. Suhag, DR for the Respondent

Date of decision : 17.4.2008

Final ORDER NO. 663/08-SM(BR)

Per Justice S.N. Jha:

This appeal by the assessee is directed against the order-in-appeal of the Commissioner (Appeals) Central Excise, Jalandhar dated 22.9.06 upholding the rejection of refund claim of the appellant by the Assistant Commissioner, Phagwara vide his order-in-original dated 27.2.06.

2. The appellant is a manufacture of BOPP film falling under Chapter Heading 39.02 of the Central Excise Tariff. During the year 2001-2002, It ~~had~~ imported filter stacks and availed modvat credit of CVD. Later , the appellant exported the goods to the original seller for repairs vide ARE-1 No. 33/2004-05 dated 1.6.04 and invoice No. E/05 dated 1.6.04 declaring the value of the goods as Rs.2,02,500/-. The appellant also debited amount of Rs.32,400/- vide RG 23 C Part II dated 1.6.04 being the amount of credit originally availed of by them at the time of import. Subsequently, on 20.12.04 they filed refund claim for the said amount of Rs.33,400/-. On 3.6.05 the appellant received show cause notice from the Assistant Commissioner against the proposed rejection of the refund claim informing the appellant that the credit had rightly been reversed in terms of Rule 3(4) of Cenvat Credit Rules, 2002. The appellant filed reply contending that in view of the provisions of Rule 4(5)(a) of the Cenvat credit Rules they were not required to reverse the credit. By order-in-original dated 27.2.06, the Assistant Commissioner rejected the

refund claim. As regards the applicability of Rule 4(5)(a) of Cenvat Credit Rules, he observed that the plea was not tenable as the goods were not sent abroad for job work but for repairs. The appellant preferred appeal which was rejected by the order-in-appeal dated 22.9.06 (supra). The Commissioner (Appeals) held *inter alia* that the issue of debit of duty at the time of export of the goods on payment of duty and availment or otherwise of credit on CVD paid at the time of re-export are two different issues. The appellant had exported the goods on payment of duty after following the proper export procedure and there was no question of refund of duty so paid as there is no provision of grant of refund of duty paid on export.

3. After hearing the parties, I am satisfied that the impugned orders are fit to be set aside as being not in accord with the provisions of Rule 4(5)(a) of the Cenvat Credit Rules. The said rule may be quoted verbatim as under:-

> "The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, reconditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the assessee taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred and eighty days, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT Credit or otherwise, but the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory."

4. No doubt, under Rule 3(4) of the CENVAT Credit Rules, any invoice or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final product is required to pay the amount equal to credit availed in respect of such inputs or capital goods. However, in view of the provisions of Rule 4(5)(a), where any inputs or capital goods are sent to a job worker for further processing, testing, repair, reconditioning or for any other purpose, and they are received back within 180 days of such consignment, the manufacturer can take CENVAT credit on receipt back of inputs and capital goods in the factory. As seen above, in the reply to show cause notice, the appellant had made a specific reference to above provision but the plea was rejected (by the Assistant Commissioner) observing that the goods had not been sent for job work but for repairs. On a plain reading of Rule 4(5)(a) it is evident that the rule applies in all cases where the input goods/ raw materials are sent for repairs, among other things. It is the specific case of the appellant that the input goods in question were sent for repairs. According to the appellant, by constant use of the subject goods (filter stacks) in the plant, with the passage of time, they get damaged necessitating repairs from time to time. While the Assistant Commissioner (Appeals) at least referred to Rule 4(5)(a) in his order, the Commissioner (Appeals) did not even care to mention it.

5. In the ordinary course, I would have sent the case back for fresh consideration by the Assistant Commissioner after verification of the

records as was done by the Single Member Bench of this Tribunal in appellant's own case (Appeal Nos. E/396, 1092-94 and 2341/05-SM) in identical circumstances. However, learned counsel of the appellant, referring to para 2 of the show cause notice, stated that the foundational facts not being in dispute, the appeal may be finally decided on merits. It was stated that from para 2 of the show cause notice it would appear that filter stacks - 34 in number – were sent for repairs vide ARE -1 No.33/2004-05 dated 1.6.04, and they were received back in the factory under Bill of entry No. 280956 on 5.7.04, i.e. well within the period of 180 days. Learned DR appearing for the Revenue fairly stated that the facts of the case about sending of input goods (filter stacks) for repair and their receipt back were within time are not in dispute, and the appellant was entitled to invoke the provisions of Rule 4(5)(a) of the CENVAT Credit Rules, 2002.

6. I accordingly, set aside the impugned orders of the Assistant Commissioner and Commissioner (Appeals) and send the matter back to the Assistant Commissioner with the direction to allow the refund claim to the appellant with consequential benefit in accordance with rules.

7. In the result, the appeal is allowed.

(Pronounced in the open Court)

(Justice S.N. Jha)
President

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