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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/1348/2007 – SM[BR] Date 14/01/2009

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S SUPER MUSIC INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 45 / 2009 - SM[BR] dated 9.1.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S SUPER MUSIC INTERNATIONAL
VILLAGE BILLANWALI, LABANA, DISTT. SOLAN (H.P.)
2. Adv. / Consult SHRI K. SRIKANTH ADV.
B-6/10, SAFDARJU/NG ENCLAVE NEW DELHI -29.

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.
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
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
15 Office Copy
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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 – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Excise Appeal No. 1348 of 2007 (SM)

[Arising out of the Order-in-Appeal No. 37/CE/CHD/2007 dated 19/02/2007 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

For Approval and signature :
Hon'ble Shri 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?	:

CCE, Chandigarh — Appellant

Versus

M/s Super Music International — Respondent

Appearance

Shri S. K. Panda, Authorized Representative (DR) – for the appellant.

Shri K. Srikanth, Advocate – for the respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 17/12/2008.
DATE OF DECISION : 09-01-2009 .

Final Order No. 45/09-SM(BR) Dated : 9-1-09

Per. Rakesh Kumar :-

Facts of the case, in brief, are that the Respondents manufacture blank/unrecorded cassettes falling under Chapter heading 85.23 and recorded cassettes falling under heading 85.24 of the Central Excise Tariff. The Respondents are also availing Cenvat credit facility under Cenvat Credit Rules, 2002. One of the inputs used by them is art-paper and gum base paper, which are got ~~invested~~ converted into inlay cards and stickers/labels on job work basis for use ~~as covers~~ in the manufacture of cassettes. Inlay cards as well as stickers are fully exempt from duty. The point of dispute is as to whether the Respondents are eligible for Cenvat credit of duty on the art paper and gum base paper. Revenue issued a show cause notice denying Cenvat credit amounting to Rs. 3,41,812/- for the period from February 2003 to December 2003 invoking Rule 6 of the Cenvat Credit Rules. The Assistant Commissioner vide order-in-original dated 22/03/06 confirmed the Cenvat credit demand of Rs. 3,41,812/- alongwith interest and besides this, imposed penalty of equal amount under Rule 13 (2) of Cenvat Credit Rules, 2002 readwith Section 11AC of the Central Excise Act, 1944. The Commissioner (Appeals), however, vide the impugned order-in-appeal set aside the Assistant Commissioner's order. The present appeal has been filed by the Revenue against the order of Commissioner's orders.

2. Heard both the sides.

2.1 Shri S.K. Panda, the learned Joint CDR reiterating the Revenue's appeal pleaded that since the duty paid art paper and gum base paper are directly used in manufacture of inlay cards and stickers/labels, which are unconditionally exempt from duty, in view of the provisions of Rule 6 of the Cenvat Credit Rules 2002, the Cenvat credit of duty on the art paper and gum base paper would not be available, even if the inlay cards and stickers/labels manufactured from these inputs are captively used in the factory in manufacture of cassettes. He, therefore, pleaded that the impugned order is contrary to the provisions of sub-rule 1 of Rule 6 of the Cenvat Credit Rules and, therefore, the same is not correct.

2.2 Shri K. Srikant, Advocate, the learned Counsel representing the Respondent pleaded that inlay card and the stickers/labels are not the finished products. These are the intermediate products which are used in the manufacture of cassettes and, therefore, the Cenvat credit of duty on art paper and gum base paper would be available to the Respondent. In this regard, he cited the Hon'ble Supreme Court judgment in the case of **Escorts Ltd. vs. CCE, Delhi** reported in **2004 (171) E.L.T. 145 (S.C.)**, wherein the Hon'ble Supreme Court held that even if the tractor parts made by one unit of M/s Escorts Ltd. out of duty paid inputs are cleared to their another unit at nil rate of duty under exemption notification No. 217/86-CE for use in the manufacture of tractors, which are cleared on payment of duty, the Cenvat credit of duty on the inputs used in the manufacture of tractor parts would be available. He pleaded that though this judgments is with regard to the provisions of Central Excise Rules, 1944 pertaining to Modvat credit, as the same existed during the period prior to 2000, The ratio of this judgment is ~~available~~ applicable to the present case also, As the ratio of this judgment is that Cenvat credit of duty on inputs used in the manufacture of intermediate product would be available even if the intermediate product is exempt from duty so long as the intermediate product is used in the manufacture of finished goods on which duty is paid.

3. I have carefully considered the submissions from both the sides. The art paper and gum base paper are used in the manufacture of inlay cards and stickers/labels which are further used in the manufacture of cassettes, Though the inlay cards and labels/stickers are unconditionally exempt from duty, the same have to be treated as intermediate product as the same are meant only for use in the manufacture of cassettes which are cleared on payment of duty. The point of dispute is as to whether Cenvat credit of duty on art paper and gum base paper used in the manufacture of these intermediate products would be available or not. The Respondent have relied upon Hon'ble Supreme Court judgment in case of Escorts Ltd. vs. CCE, Delhi (Supra), on going through which I find that the same is based on Rule 57D (2) of the Central Excise Rules, as it existed during the period ~~of dispute~~ prior to 1/4/2000 and

according to which the credit of specified duty allowed in respect of any inputs shall not be denied or varied on the ground that any intermediate products have come into existence during the course of manufacture of final product and that such intermediate products are, for the time being, exempt from the whole of the duty of excise leviable ~~excess eligible~~ thereon or chargeable to nil rate of duty. Though, the relevant rules for the period of dispute in this case are Cenvat Credit Rules, 2002 and in these rules there is no provision analogous ~~analogues~~ to Rule 57 D (2) of the Erstwhile Central Excise Rules, 1944, I find that as per para 3.9 of the CBEC's Excise Manual of Supplementary Instructions, Cenvat credit shall be admissible in respect of the amount of inputs contained in any of the waste, refuse or by-product and similarly Cenvat credit shall ~~should~~ not be denied if the inputs are used in any intermediate ~~of the final~~ product, even, if such intermediate is exempt from payment of duty and that the basic idea is that Cenvat credit is admissible so long as the inputs are used in or in relation to the manufacture of final products whether directly or indirectly. These supplementary instructions have ~~had~~ been issued by the Board under Rule 32 of the Central Excise Rules, 2001 and that these instructions are binding on all the Central Excise officers. Therefore, I am of the view that the Cenvat Credit Rules, 2002 have to be readwith Chapter 5, pertaining to Cenvat Credit, of CBEC's Excise Manual of Supplementary Instructions, para 3.9 which clearly states that Cenvat credit is not to be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from duty and, therefore, applying the ratio of Hon'ble Supreme Court judgment in the case of Escorts Ltd. vs. CCE, Delhi, the Cenvat credit of duty on art paper and gum base paper, used in the manufacture of inlay paper and label/stickers, which the firm are ~~internally~~ used in the manufacture of cassettes, would be available to the Respondents. In view of this, I find no infirmity in the impugned order. The Revenue's appeal is dismissed.

(Pronounced in open court on 9/1/09).

(Rakesh Kumar)
Member (Technical)

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