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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/1837/2006-1839/2006 – SM[BR] Date 24/02/2009

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 SOOD PACKAGERS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 193 -195 / 2009 - SM[BR] dated 10.2.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
(1-3) M/S SOOD PACKAGERS
D-91,92 FOCAL POINT RAJPURA DISTT PATIALA (PB)
2. Adv. / Consult SHRI K.K. ANAND ADV.
A-5, [BASMENT] LAJPAT NAGAR
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 - 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
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 10.2.2009

Central Excise Appeal Nos.1837-1839 of 2006

Arising out of the order in appeal No.175-177/CE/CHD/2006 dated 28.2.2006 passed by the Commissioner (Appeals), Central Excise, Chandigarh.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter 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 CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Appellant — Respondent

C.C.E., Chandigarh vs. M/s Sood Packagers and others

Appearance:

Shri M.M. Singh, Authorized Departmental Representative (DR) for the Revenue and Shri Hemant Bajaj, Advocate with Ms. Asmita Nayak, Advocate for the respondents

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 193-195/09-SM(BR)

Per M. Veeraiyan:

These appeals relate to the same respondent and arise out of a common order in appeal No. 175-177/CE/CHD/2006 dated 28.2.2006.

2. The relevant facts, in brief, are as follows:

a) The respondent is a manufacturer of printed bags/printed films/poly bags and pouches. They received printing cylinders and taken credit as capital goods. After use of the cylinders for some time they become unusable for the intended purpose and it would be a scrap unless it is got engraved , rechromed or reengraved. They have sent such worn out cylinders for the purpose of engraving, rechroming, reengraving to the job workers. The said job workers after completing the said operation and treating the goods as manufactured at their end had paid duty on value consisting of value of Base shell and job charges received for such engraving , rechroming and reengraving. Duty paid by the job workers at the time of clearing reconditioned printing cylinders has been taken by the respondent as credit.

b) The original authority held that the capital goods have not been cleared under Rule 3(4) for the purpose of job work. Therefore, their taking credit when the reconditioned printing cylinders came back paying duty for a second time is incorrect and accordingly, confirmed demands of Rs.23,468/- + Rs.30.350/- + Rs.20,601/- in three cases and in addition imposed equal amounts as penalties.

c) Commissioner (Appeals) allowed the appeal of the party with the following findings:

> " ***I have carefully examined the case records including the appellants submissions made in writing and at the time of personal hearing and observe that the adjudicating authority denied the cenvat only on the grounds that the appellant availed cenvat credit for the second time on the same capital goods which is not admissible to the appellant as they sent the cylinders for processing without reversing the cenvat credit.Whereas the contention of the appellant is that after some use of cylinders become defective and are only considered Base Shell which requires engraving/rechroming and reengraving amount to manufacture of the new products. The manufacturer after doing the engraving/rechroming which amount of cylinders, return the cylinders under the proper invoice after payment of duth.Since the printing cylinders are considered as capital goods, which have been accepted by the Department, the appellants are very much entitled for the cenvat credit of the Central Excise duty paid by the processors.***

Moreover, under Rule 7 of the Cenvat Credit Rules the appellant is entitled for the cenvat credit."

3. Learned DR submits that the second time credit taken by the respondents is not in order. He submits that the capital goods though cleared after use by the respondents should be treated as cleared as such in terms of Rule 3(5) of Cenvat Credit Rules and they ought to have reversed the Cenvat credit originally taken by them on the printing cylinders. Since they have not reversed it, taking credit for the second time is not in order. Learned DR relies on the decision of the Larger Bench of the Tribunal in the case of Modernova Plastyles Pvt. Ltd. vs. C.C.E., Raigad – 2008 (122) 29 (Tri-LB).

4. Learned Advocate for the respondents submits that they were entitled to remove under Rule 4(5)(a) under challan for the purpose of reengraving, rechroming and get it back for further use in their factory the said printing cylinders. In such a situation, the question of debiting cevat credit at the time of removal of worn out cylinders and consequently taking credit for a second time does not arise. Even if Cenvat credit was reversed at the time of clearance, the said Cenvat credit was available to the job workers for paying towards excise duty at their end. There is no dispute that the job worker has undertaken the manufacturing activity on the worn out printing cylinders and paid excise duty. Therefore, taking of the credit is in order.

5.1 I have carefully considered the submissions from both sides. It is not disputed that printing cylinders have been cleared after use as capital goods by the respondents. Under these circumstances, I do not agree with the contention that the capital goods are removed as such and therefore, invocation of Rule 3(5) which applies to removal of the capital goods removed as such does not arise. At any rate there is no demand of Cenvat credit which was not reversed at the time of clearance of capital goods from the premises of the respondents.

5.2 It is not in dispute that job worker has paid excise duty while clearing the reconditioned printing cylinders and the reconditioned cylinders have been received back for further use. Therefore, I do not find anything irregular in availing Cenvat credit.

5.3 The decision relied upon by the learned DR in the case of Modernova Plastyles Pvt. Ltd. cited supra applies to a case where the capital goods as such were sent to the job worker. In this case, the capital goods have not been cleared as such but after having been used for the intended purpose. If the same were not sent for reconditioning, the goods should have been scraped.

5.4 Even if Cenvat credit was reversed at the time of clearing the worn out printing cylinders, the same was available as Cenvat credit for the job worker and to that extent, payment of excise duty in cash will be reduced by the job worker. The entire duty paid by the job worker including amount paid from Cenvat credit becomes available again for being taken as Cenvat credit by the respondent. This will be a clear case of revenue neutrality as well.

6. In the light of the above, I do not find any infirmity in the order of the Commissioner (Appeals). Therefore, the appeals are rejected.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/