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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/1296/2006 – SM[BR] Date 23/03/2009

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

To :
CCE,JAIPUR-II

NCRB STATE CIRCLE,C SCHEME,JAIPUR

CCE,JAIPUR-II Appellant

Vs

M/S MOHINI PROCESS Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 248 / 2009 –SM[BR] dated 12.3.2009

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 MOHINI PROCESS

26,MAHAVEER UDYOG NAGAR,PALI MARWAR
2. Adv. / Consult SHRI BIPIN GARG, ADV.
B-1/1289 –A, VASANT KUNJ NEW DELHI -70.

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

COURT – III

CENTRAL EXCISE APPEAL NO. 1296 OF 2006-SM

[Arising out of Order-in-Appeal No. 64(HKS)CE/JPR-II/2006 dated 23.1.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	Yes

CCE, Jaipur-II — Appellant

Vs.

M/s. Mohini Process — Respondent

Appearance:

Shri S. Gautam, D.R. for the Revenue/appellant;
Shri Bipin Garg, Advocate, for the appellant;

Coram:

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

Date of hearing/decision: 12th March, 2009

FINAL ORDER NO.242/09-SM(DR) **dated** 12.3.09

Per P.K. Das:

The Revenue filed this appeal against Order-in-Appeal No. 64(HKS)CE/JPR-II/2006 dated 23.1.2006 whereby adjudication order was set aside.

2. Learned D.R. reiterates the grounds of appeal. He submits that the respondents are engaged in the Stentering of Processed/Dyed Fabrics falling under Chapter No. 52, 54 & 55 of the Schedule to the Central Excise Tariff Act, 1985. He submits that the respondents availed irregular deemed credit amounting to Rs. 1,91,105/- in violation of Rule 9A of CENVAT Credit Rules, 2002, inserted under Notification No. 25/2003-CE(NT) dated 25.3.2005 as "Transitional provision for Textile and Textile Articles" in the Cenvat Credit Rules, 2002. He submits that the respondents are eligible for the deemed credit on the stock declared as on 31.3.2003. The Commissioner (Appeals) allowed the deemed credit on the stock declared as on 1.4.2003, which is contrary to the Rule 9A of CENVAT Credit Rules, 2002. He, further, submits that the fabrics in question were not attracting duty at the time of its removal from the factory of the supplier. So, the deemed credit is not available to them.

3. Learned Advocate for the respondents reiterates the findings of the Commissioner (Appeals). He submits that the goods were purchased

from the trader as it is evident from the adjudication order. He also submits that Board's vide Circular F. No. B3/5/2003-TRU dated 30.4.2003 has clarified that stocks of inputs as on 1.4.2003 would be eligible for deemed credit under Rule 9A of the said Rules in terms of amended notification No. 40/2003-CE(NT) dated 30.4.2003.

4. After hearing both the sides and on perused of the records, I find from the adjudication order that the issue involved in this case is, whether one time Cenvat Credit in terms of Rule 9A of Cenvat Credit Rules, 2002 is admissible in respect of inputs (Dyed Fabrics) cleared by trader on 1.4.2003 and received by the assessee on 1.4.2004. The Commissioner (Appeals) after considering the proviso to Rule 9A of Cenvat Credit Rules, 2002, as amended by notification No. 40/2003 (supra) held that the respondents are eligible for the credit on the stock received on 1.4.2003. The relevant portion of the findings of the Commissioner (Appeals) is reproduced below:-

"17. As per the amendment carried out vide Notification No. 40/2003-CE(NT) dated 30.4.2003 a manufacturer was entitled for one time credit in respect of the goods lying in stock as on 01.04.2003. There was no condition under the provisions of rule 9A of the Cenvat Credit Rules, 2002 that the goods should be dispatched by the supplier on or before 31.3.2003. Therefore, as per the provisions of rule 9A of Cenvat Credit Rules, 2002 a manufacturer shall be entitled to avail one time credit on the stock held as on 01.04.2003 irrespective of the fact when the supplier dispatched the goods. In the instant case the appellants received the goods on 01.04.2003 and the same were in stock as on 01.04.2003. Accordingly, the appellants are entitled for the disputed credit of Rs. 1,91.105/- in respect of the goods in stock.

18. In view of the facts discussed above, disallowing the Cenvat credit by the adjudicating authority is not in order and so as the penalty imposed on the appellants. Therefore, the impugned order is set aside."

5. It is noticed that the Board vide Circular dated 30.4.2003 clarified as under:-

"3.4 Rule 9A of the CENVAT Credit Rules, 2002 has been further amended so as to change the relevant date for input stock declaration from 31.3.2003 to 1.4.2003. Consequently, the stock of inputs lying as on 1.4.2003 (instead of 31.03.2003) would ~~not~~ now be eligible for one time credit under Rule 9A of the CENVAT Credit Rules, 2002. (Notification NO. 40/2003-C.E. (N.T.), dated 30.4.2003 refers)."

6. In view of the Board's Circular and on perusal of Rule 9A, as amended by notification No. 40/2003, I do not find any reason to interfere with the order of the Commissioner (Appeals). The contention of the learned D.R. that fabrics in question were not attracting duty at the time of its removal from the factory of the supplier is not supported by any material. In addition to that, it is admitted position that the goods were received by the respondents from trader. Therefore, I do not find any force in the submission of the learned D.R.

7. In view of the above discussion, I do not find any reason to interfere with the order of the Commissioner (Appeals). Accordingly, appeal filed by the Revenue is dismissed.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK