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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 / 1590 - 1593 / 2007, 1705 & 1707 / 2007 AND E/ 1989 / 2007 -SM[BR] Date 21/05/2009

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

To :
C.C.E. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR II Appellant
Vs
M/S MEHTA FENT CENTRE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 435 - 441 / 2009 -SM[BR] dated 23.4.2009 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 MEHTA FENT CENTRE
   E-162,MADIA ROAD, PALI (RAJASTHAN)

   [2] M/S SHAKESHWAR FABRICS PVT.LTD.
   F-362, MANDIA ROAD, PALI [RAJ.]
   [3]M/S JAGDISH DYEING , E-6, MANDIA ROADPALI[RAJ.]
   [4]M/S MINARVA INDUSTRIES F-127, MADIA ROAD, PALI[RAJ]
   [5]M/S MINERWA INDUSTRIES F-127, MANDIA ROAD PALI[RAJ
   [6]M/S SHANTI TEXTILA INDUSTRIES
   F-64, MANDIA ROAD PALI [RAJ]
   [7]M/S PRAFUL FABRICS E-213, MANDIA ROAD, PALI[RAJ]
2. Adv. / Consult SHRI K.K.ANAND ADV.
   A-5, BASEMENT
   LAJPAT NAGAR-III,
   NEW DELHI-24.
3. S.D.R
4. ~~J.C.D.R.~~
5. Bar association. CESTAT. New Delhi
6. Director Publications. Customs. Excise. I.P. Estate. New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh. New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.1590-93 of 2007, 1705&1707 of 2007-SM (BR) and E/1989 of 2007-SM (BR)

[Arising out of common Order-in-Appeal No.156-159(HKS)CE/JPR-II/2007 dated 9.3.2007 in Appeals Nos.1590-93 of 2007-SM (BR), Order-in-Appeals Nos.156-159(HKS)CE/JPR-II/2007 dated 13.03.2007 in Appeals Nos.1705-1707 of 2007-SM (BR) and Order-in-Appeals Nos.173-175(HKS)CE/JPR-II/2007 dated 16.03.2007 in Appeal No.E/1989 of 2007-SM (BR) passed by the Commissioner of Central Excise (Appeals), Jaipur]

Date of Hearing/ Decision:23.04.09

For approval and signature:

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

3. Whether Press Reporters may be allowed to see 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? : 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

Appeals Nos.E/1590-93 of 2007-SM (BR)

CCE, Jaipur .....Appellants

Vs.

(1) M/s.Mehta Fent Centre
(2) M/s.Shakeshwar Fabrics Pvt. Ltd.
(3) M/s. Jagdish Dyeing
(4) M/s. Minarva Industries ...Respondents

Appeals Nos.E/1705 & 1707 of 2007-SM (BR)

(1) M/s. Minerva Industries ....Appellants
(2) M/s. Shanti Textiles Industries

Vs.

CCE, Jaipur-II ...Respondent

Appeal No.E/1989 of 2007-SM (BR)

M/s. Praful Fabrics ....Appellant

Vs.

CCE, Jaipur-II ...Respondent

Appearance:
Ms. Asmita Nayak, Advocate on behalf of Assessees.
Shri S. Gautam, DR and Shri R.K. Verma, DR on behalf of Revenue.

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

Final Order No.435 to 441/09-SM(BR)/Dated:23.04.2009

Per P.K. Das:

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the assessees are engaged in the manufacture of Processed Cotton and Man Made Fabrics classifiable under Chapter 52 and 55 of the schedule to the Central Excise Tariff Act. Rule 9A was inserted in Cenvat Credit Rules, 2002 by Notification No.25/2003-CE (NT) dated 25.03.2003, being "Transitional provisions of textile and textile articles". Rule 9A(2) of the said Rules provides for availment of Cenvat Credit on the specified inputs in process/finished goods lying in stock on 31.3.2003 (subsequently allowed for 1.4.2003). The assessee filed declaration of stock with value of inputs in case of under-processed goods inclusive of processing charges whereas the Rule requires that the same is to be filed without processing charges. Show cause notices were issued proposing recovery of irregular credit taken on the processing charges and imposition of penalty along with

interest. The Original Authority confirmed the demand of duty along with interest and imposed penalties except in Appeal No.E/1707 of 2007-SM (BR) wherein only demand of duty. The Commissioner (Appeals) upheld the demand of duty and penalty. He set aside the recovery of interest. Hence, Revenue filed Appeals for recovery of interest. Assessees filed appeals against demand of duty and penalty.

3. Heard both sides and perused the records.

4. Ld. Advocate fairly submits that the Tribunal in the case of B.B. Shah (Pvt.) Ltd. Vs. Commissioner of Central Excise, Jaipur reported in 2008 (224) ELT 154 (Tribunal-Delhi) held that the credit can not be allowed on processing charges, but set aside personal penalties. She submits that in view of the decision of the Tribunal in the case of B.B. Shah Pvt. Ltd. (supra), imposition of penalty is not warranted. Regarding the appeals filed by Revenue, she submits that the Commissioner (Appeals) observed that the credit was not utilised and therefore interest cannot be demanded. She submits that the Commissioner (Appeals) set aside the recovery of interest following the decision of the Tribunal. It is submitted that the Tribunal in the case of M/s. Lafarge (India) Pvt. Ltd. vs. CCE, vide Final Order No.103/08-SM (BR) dated 11.01.2008 held that demand of interest is not sustainable on the Cenvat credit, if it is not utilised. She also submits that the Hon'ble Punjab & Haryana High Court in the case of Commissioner of Central Excise, Delhi Vs. Maruti Udyog Limited – 2007 (214) ELT 173 (P&H) held that the credit taken, but not

utilised, not liable to pay interest, which was upheld by the Hon'ble Supreme Court as reported in 2007 (214) ELT A-50 (SC).

5. Ld. DR on behalf of the Revenue submits that the assessee availed credit and, therefore, they are liable to pay interest under Section 11 AB of the Central Excise Act, 1944. He submits that there is no need to look into the utilisation of the credit.

6. I find that the issue has already been decided by the Tribunal in the case of B.B. Shah (Pvt.) Ltd. (supra), wherein the demand of duty was upheld and penalty was set aside. Therefore, the appeals filed by the assessee against demand of duty is upheld and penalty is set aside. Regarding the appeals filed by the Revenue, it is seen that the Commissioner (Appeals) observed that the assessees have not utilised the credit, which was not rebutted in the grounds of appeal by the Revenue. It is well settled that when the credit was not utilised, recovery of interest is not sustainable.

7. Therefore, Appeal No.1707 of 2007-SM (BR) filed by the assessee in respect of demand of duty is ~~also~~ rejected. In Appeal No.1705 and 1707 of 2007-SM (BR) filed by the assessee, the demand of duty is upheld and penalty is set aside. Appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 23.04.2009.

(P.K. Das)
Member (Judicial)

Ckp.