TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 16/06/2009

Appeal No. E/1995/2007 – SM[BR]

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

To :
PBM POLYTEX LTD. (UNIT: BLP SUPER SPINNERS)
B-16 TO 19, AKVN GROWTH CENTRE, BORGAON,
TAH. SAUSAR, DISTT. CHHINDWARA, M.P.

PBM POLYTEX LTD. (UNIT: BLP SUPER SPINNERS) Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 562 / 2009 –SM[BR] dated 20.5.2009 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 BHOPAL

   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult

   NONE;-------------

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 & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

EXCISE APPEAL NO. 1995 OF 2007-SM

[Arising out of Order-in-Appeal No. 266-CE/BPL/2006 dated 09.03.07 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal]

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.

M/s. PBM Polytex Ltd., Appellants

Vs.

CCE, Bhopal Respondent

Appearance:

None for the appellants;
Shri Sansar Chand, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 20th May, 2009

FINAL ORDER NO. 562/09-SM(BR) **dated** 20.5.09

Per P.K. Das:

The appellants filed written submissions and requested to decide the matter in their absence on merit on the basis of available records.

2. The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Cotton Yarn, classifiable under Chapter 52 of the Schedule to the Central Excise Tariff Act, 1985. On 16.7.2004 the appellants opted for exemption from central excise duty on Cotton Yarn falling under Chapter 52 of Central Excise Act, 1985 under notification No. 30/2004-CX dated 9.7.2004 dated 9.7.2004. It has been alleged that the appellants availed inadmissible credit on capital goods of Rs. 1,08,160/- during the period September, 2005 to March, 2006 in violation of Rule 6(4) of Cenvat Credit Rules, 2004. I has further been alleged that capital goods were used exclusively for the manufacture of exempted final product. Original authority confirmed the demand of Cenvat Credit of Rs. 1,08,160/- and imposed penalty of equal amount under Rule 15 of Cenvat Credit Rules, 2002. Commissioner (Appeals) upheld the adjudication order.

3. After hearing learned D.R. and on perusal of the records, I find that the main contention of the appellants is that notification No. 30/2004-Ex

(supra) allowed exemption subject to no credit availed on inputs and, therefore, denial of credit on capital goods is not proper. The appellants also contended that they have not utilized the credit in question and, therefore, imposition of penalty is not warranted.

4. I find that Rule 6(4) of Rules provides that "no Cenvat credit shall be allowed on capital goods which are exclusively used in the manufacture of exempted goods other than final products which are exempted from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon value of quantity of clearance made in a financial year." In the present case, there is no dispute that the capital goods were used exclusively for the manufacture of exempted finished products. It is also not the case that exemption is based upon the value or quantity of clearance made in a financial year. So, credit availed by the appellants is hit by Rule 6(4) of Rules. The condition of exemption notification No. 30/2004 (supra) is for the purpose of availing the benefit of the said notification. Hence, I do not find any merit in the submission of the appellants in respect of demand of duty. However, I find force in the submission of the appellants in respect of imposition of penalty. It appears that the appellants had not utilized the credit taken on the capital goods during the material period. Further, in the present case eligibility of credit is the subject of interpretation of provisions of law. So, imposition of penalty under Rule 15 of Rules is not warranted.

5. In view of the above discussion demand of Cenvat Credit is upheld and penalty is set aside. The appeal is disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK