

**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/291 /2008-292 /2008 – SM[BR]

Date 18/06/2009

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

To :

(1-2) M/S JYOT OVERSEAS PVT. LTD.

G/26, ARBUDA IND. AREA, ABU ROAD (RAJASTHAN)

M/S JYOT OVERSEAS PVT. LTD.

Appellant

Vs

Respondent

C.C.E. JAIPUR II

I am directed to transmit herewith a certified copy of Final order No. 587 – 588 / 2009 –SM[BR] dated 2.6.2009  
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. JAIPUR II

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

MR.O. P.AGARWAL & CO.

56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

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 Publications 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 Kuni, 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 (Harvana)

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**

**CENTRAL EXCISE APPEAL NO. 291-292 OF 2008-SM**

[Arising out of Order-in-Appeal No. 563/RKS/CE/JPR-II/07 dated 14.11.2007 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? | h  |
| 3. | Whether their Lordships wish to see the fair copy of the order?                                                                      |    |
| 4. | Whether order is to be circulated to the Departmental authorities?                                                                   | Ym |

M/s. Jyoti Overseas (P) Ltd.,

Appellants

Vs.

CCE, Jaipur-II

Respondent

**Appearance:**

Shri O.P. Agarwal, Consultant for the respondents;  
Shri R.K. Saini, D.R. for the Revenue

**Coram:**

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

**Date of hearing/decision: 2<sup>nd</sup> June, 2009**

**FINAL ORDER NO.** 587-588/09-sm(DR) **dated** 2.6.09

**Per P.K. Das:**

Since common issue involved in these appeals, therefore, both the appeals are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants were engaged in the manufacture of Psyllium Seed Husk and were exporting the entire products. They filed rebate claim of service tax and CESS paid on taxable services exported in terms of Rule 3 of the Export of Service Rules, 2005. Show cause notice was issued proposing to reject the rebate claim on the ground that the appellants have not exported any service. In reply to show cause notice the appellants changed their stand inasmuch as they requested to treat the claim as refund claim under Rule 5 of Cenvat Credit Rules, 2004. It was requested that the claim may be treated as refund of Service Tax paid on services used in the manufacture of exported goods cleared under bond. The original authority rejected the refund claim. The Commissioner (Appeals) upheld the adjudication order.

3. Learned Counsel on behalf of the appellants submits that Rule 5 of Cenvat Credit Rules provide that when any input or input service is used in the manufacture of final product which is cleared for export under bond and for any reason cannot be utilized by the manufacturer, the

manufacturer shall be allowed refund of such amount. He submits that the findings of the Commissioner (Appeals) that the goods were exempted from duty and, therefore, refund is not sustainable, is contrary to the various decisions of the Hon'ble High Court and the Tribunal. He relied upon the decision of the Hon'ble High Court and the Tribunal:-

(a) *Repro India Ltd. vs. UOI & Anr.* –

2008 (88) RLT 481 (Bom.)

(b) *CCE, B'lore vs. ANZ International* –

2009 (90) RLT 586 (Kar.)

(c) *CCE, Chandigarh vs. Drish Shoes Ltd.* –

2009 (90) RLT 686 (CESTAT-Del.)

(d) *CCE, Rohtak vs. Sunny Exports* –

2008 (85) RLT 190 (CESTAT- Del.)

4. Learned D.R. reiterates the findings of the Commissioner (Appeals). He submits that admittedly the exported goods are exempted from duty and, therefore, there is no requirement for furnishing bond. Hence, rebate claim is not permitted under Rule 6(1) of Cenvat Credit Rules.

5. After hearing both sides and on perusal of the records, I find that the findings of the Commissioner (Appeals) is that the appellants availed Cenvat Credit on inputs services used in or in relation to manufacture of unconditionally exempted goods. Rule 6(1) of Cenvat Credit Rules, 2004 provides that Cenvat Credit shall not be allowed on such quantity of

inputs or input services which is used in the manufacture of exempted goods or exempted services. Rule 6(6) of the said Rules provides that proviso to Sub-rule (1) of Rule 6 shall not apply in case of exported goods removed without payment of duty cleared for export under bond in terms of Central Excise Rules, 2002. In the present case, there is no dispute that the appellants cleared the goods under bond. So Rule 6(6) of the Rules would be applicable herein. The original authority observed that as the goods is exempted there is no requirement for furnishing bond. According to him, there is no requirement of furnishing bond and therefore, it does not come within the purview of Rule 6(6). I find that this issue has already been settled by the Hon'ble Bombay High Court in the case of Repro India Ltd. (supra) as under:-

“We may also consider the various clauses of Rule 6(6) which would indicate that they relate to goods which are wholly exempt from duty. Rule 6(6)(i) relates to supply of SEZ. These are wholly exempted from duty vide Notification dated 19<sup>th</sup> October, 2001 and notification dated 22<sup>nd</sup> July, 2003. Rule 6(6)(ii) relates to supply of goods to Exported Oriented Units. These are wholly exempt by Notification dated 31<sup>st</sup> March, 2003. Rule 6(6)(iii) relates to goods supplied to a unit located in Electronic Hardware Technology Park or Software Technology Park. Such supplies are exempt from duty by Notification dated 31<sup>st</sup> March, 2003. Rule 6(6)(iv) relates to supplies to United Nations or an international organization for their official use. These are exempt by

Notification No. 108/95. Rule 6(6)(v) relates to export under bond. Rule 6(6)(vi) relates to gold or silver arising during refining of copper. These are exempt from payment of duty by Notification No. 5/2006-CE dated 1<sup>st</sup> March, 2006. It would thus be clear that all the clauses of Rule 6(6) are enacted only to deal with the situation when the final products are exempt from payment of duty. If a final product is not exempted from duty, Rule 6(1) is not attracted at all and hence Rule 6(6) is unnecessary. Rule 6(6) is precisely needed only when the final products are exempt from payment of duty. In this context the Revenue itself has accepted that under the provisions of Cenvat Credit Rules, 2002 there were provisions for removal of exempted goods under bond but the same was not available with effect from 9<sup>th</sup> September, 2004 under Cenvat Credit Rules, 2004.

xxx    xxx    xxx    xxx    xxx    xxx    xxx    xxx

The minor change in the wordings of Rule 6(6) of the Cenvat Credit Rules, 2004 by using the term “excisable goods” instead of exempted goods is that the term ‘exempted goods’ may not cover the dutiable goods which are exported under bond. Therefore, in order to widen and cover both dutiable and exempted goods exported under bond, Rule 6(6) of Cenvat Credit Rules, 2004 uses the expression “excisable goods”. As an illustration, if a car which is dutiable is exported under bond without payment of duty there may be doubt as to whether credit on the inputs will be available, since the car is cleared without payment of duty under

Rule 6(5) of Cenvat Credit Rules, 2002. It could be argued that it covers only the exempted goods exported and not dutiable goods exported. In order to cover such a situation also, Rule 6(6) of Cenvat Credit Rules, 2004 used the expression 'excisable goods' which is wider to include both dutiable as well as exempted goods."

6. It is seen that the Tribunal in the case of Drish Shoes Ltd. (supra) following the decision of the Bombay High Court held that inputs used in manufacture of exempted final product which is exported, inputs credit and its refund are admissible under Rule 5 & 6 of Cenvat Credit Rules, 2004.

7. In the present case, there is no dispute that the goods were exported and not liable any duty. The issue is settled by the Hon'ble High Court and the Tribunal in favour of the appellants as stated above.

8. In view of above discussion, impugned order is set aside and the appeals are allowed with consequential relief.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)  
MEMBER (JUDICIAL)

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