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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

Date 13/07/2009

Appeal No. E/1608 -1613 /2007 & 2788-2789 / 2007 –SM[BR]

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

To :
(1-8) M/S JAIN TEXTILE IND. — Appellant
BEHRAMPUR ROAD, GURGAON.
Vs
M/S JAIN TEXTILE IND. — Respondent

C.C.E. DELHI III

I am directed to transmit herewith a certified copy of **Final order No.** 676 – 683 / 2009 –SM[BR] dated 24.6.2009 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. DELHI III
   UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ, PHASE V, GURGAON - 122016 (HARYANA)
2. Adv. / Consult
   MR.BIPIN GARG
   B-1/1289,A-VASANT KUNJ, NEW DELHI

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-1
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066,
PRINCIPAL BENCH, COURT NO.IV

Excise Appeal Nos. 1608 to 1613 of 2007 & 2788 to 2789 of 2007–SM (Br.)

[Arising out of Order-in-Appeal No. 327 – 334/NS/GGN/2006 dated 29.11.2006 passed by the Commissioner, Central Excise (Appeals), Gurgaon]

Date of Hearing/Decision: 24.06.2009

For approval and signature:

Hon'ble Shri Rakesh Kumar, Member (Technical)

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 should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s Jain Textiles Industries — Appellant
Rep. by Shri Atul Gupta, Com. Secy. for the Appellant

Vs.

CCE, Delhi-III — Respondent
Rep. by Shri R.K. Verma, DR for the Respondent

Coram: Hon'ble Shri Rakesh Kumar, Member (Technical)

Final **ORDER** 676 to 683/2009 SM(BR)

Per Rakesh Kumar:

The facts giving rise to these appeals are, in brief, as under:-

1.1 The appellants are engaged in the manufacture of processed textile fabrics. The grey textile fabric is their main raw material. They availed cenvat credit of duty paid on grey fabrics and other materials used in the manufacture of processed fabrics. Notification No.43/2001-CE(NT) dated 26.01.2001, as amended, issued under rule 19(3) read with rule 19(2) of Central Excise Rules 2001-2002 provides for procurement for excisable goods without payment of duty for use in manufacture or processing of export goods and subject to the conditions and safeguard presented in it and also subject to the procedure and provisions of the Central Excise (Removal of goods at concessional rate of duty for manufacture of excisable goods) Rule 2001. The appellant manufactured processed fabrics (cotton corduroy fabrics) which were supplied without payment of duty to M/s Celebrity Fashion Pvt. Ltd., (CFPL) Chennai, M/s A.G. Export Industries, Bangalore, M/s JBC International, Bangalore and M/s S&R Exports Pvt. Ltd., Panipat against procurement certificate produced by them. These clearances have been made without payment of duty under Notification No. 43/2001-CE (NT). M/s CFPL M/s AG, M/s JBC & M/s S&R used the processed fabrics for manufacture of readymade garments and exported the same out of India. The appellant had taken cenvat credit of duty on inputs used in the manufacture of processed fabrics which, in turn, were cleared to M/s CFPL M/s JBC, M/s AE & M/s S&R without payment of duty for used in the manufacture of garments for export. The appellant sought refund of the cenvat credit of duty on inputs which were used in manufacture for processed fabrics which in turn, were cleared to M/s CFCL M/s JBC, M/s AE & M/s S&R without payment of duty for use in manufacture of readymade garments for export out of India. The Jurisdictional Deputy Commissioner sanctioned the claim but the Deputy Commissioner's orders were reviewed and appeals were filed before the Commissioner (Appeals). The Commissioner (Appeals) vide the impugned order No. 327 – 334/NS/GGN/2006 dated 29.11.2006 allowed the Revenue's appeals and set aside the orders of the Deputy Commissioner. It is against these orders of CCE (Appeals), that the present appeals have been filed.

2. Heard both the sides.

3. Learned Counsel for the appellant pleaded that as per Rule 5 of the Cenvat Credit Rules 2002, where any input or input service is used in the manufacture of final products, which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, or used in providing output service which is exported, the CENVAT credit in respect of the input or input service so used shall be allowed to be utilized by the manufacturer or provider of output service towards payment of excise duty for home consumption or for export on payment of duty; and where for any reason, such adjustment is not possible, the manufacturer shall be allowed refund of such ~~amount~~ unutilised credit subject to such safeguards, conditions and limitations, as may be specified, by the Central Government, by notification and that refund of credit shall not be allowed if the manufacturer or provider of output service avails of drawback allowed in respect of such input duty. In these cases the grey fabrics and other inputs were used for manufacture of processed fabrics which were used as intermediate products by the garment manufacturers for manufacture of garments which were exported out of India. Since as per Rule 5 of the Cenvat Credit Rules cenvat credit is permissible in respect of inputs used for manufacture of intermediate products, which are used for manufacture of finished goods for export and since the garments have been exported without claim for drawback or input duty rebate and the appellants are not able to utilize the credit for payment of duty for domestic clearances, they are eligible for cash refund. In this regard, he cited the judgement of the Tribunal in the case of S.V.M Textile Mills vs. CCE, Coimbatore reported in 2006 (199) ELT 270 (Tri. Chennai) and CCE, Kolkata-III vs. U.I.C. Wires Ltd., reported in 2003 (158) ELT 723 (Tri. Kolkata). In view of the above, he pleaded that the Commissioner's (Appeals) order is not correct.

4. Shri R.K. Verma, learned DR defending the impugned order reiterated the findings of the Commissioner (Appeals) and also cited the judgement of the Tribunal reported in 2006 (195) ELT 97.

5. I have carefully considered the submissions from both the sides. The only issue involved in this case is whether refund of surplus credit is admissible under rule 5 of the Cenvat Credit Rules to the manufacturer who is not direct exporter of the goods. I find that the issue involved in this case is squarely covered by the decision of the Tribunal in the case of S.V.M Textile Mills vs. CCE, Coimbatore (supra) wherein the Tribunal held that when the clearances of goods (made ups) for export were made from manufacturer-exporter's premises, and not from appellant's premises, refund claim is not deniable on ground that export goods were not removed from appellant's factory. Same view has been taken in the case of U.I.C. Wires Ltd., where M/s U.I.C. wires cleared H.T. wire made out of wire rods, in respect of which cenvat credit had been taken, without payment of duty to another factory for use in the manufacture of concrete sleepers for export out of India and the Tribunal in this case held that M/s UIC would be eligible for refund of cenvat credit in terms of rule 5 of the Cenvat Credit Rules. Moreover, I also find that the Assistant Commissioner in his orders has given a finding that the exports have not been made under drawback claim or rebate claim. In the case of Raj Enterprises (supra) cited by the learned DR, the refund of unutilized cenvat credit under rule 5 had been ~~referred~~ refused on the ground that the finished goods had been exported under drawback claim, but this is not so in this case. In view of the above discussion and following the judgement of the Tribunal in the case of S.V.M Textile Mills and U.I.C. Wires Ltd., I hold that the impugned orders is not sustainable. Hence the same is set aside. The appeals are allowed.

[Dictated and pronounced in the open Court]

[Rakesh Kumar]
Member (Technical)

[Pant]