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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. ST/342 /2007 – SM[BR] Date 12/10/2009

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

To :
NOBLE GRAIN INDIA PVT LTD
VILLAGE- PIDGAON, HARDA(MP)

NOBLE GRAIN INDIA PVT LTD Appellant
Vs
C.C.E. INDORE Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1225 / 2009 –SM[BR] dated 26.8.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
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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)
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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

SERVICE TAX APPEAL NO. 342 OF 2007-SM

[Arising out of Order-in-Appeal No. 117-ST/BPL/2006 dated 21.03.2007 passed by the Commissioner (Appeals), 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. Noble Grain India Pvt. Ltd., Appellants

Vs.

CCE, Indore Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the assessee;
Shri I. Baig, SDR for the Revenue

Coram:

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

Date of hearing/decision: 26th August, 2009

FINAL ORDER NO. 1225/2009 SM (BR) **dated** ________

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants are engaged in the manufacture of Soya Oil exempted under notification No. 3/2006 dated 1.3.2006 and De-Oiled Cake chargeable to nil rate of duty. The appellants has been exporting De-Oiled Cake under Bond. The appellants filed refund claim of Rs. 2,80,053.58 of Cenvat credit on input service i.e. GTA service, Insurance, Brokerage service, and Travel Agency service under Rule 5 of Cenvat Credit Rules, 2004. The original authority rejected the refund claim, which is upheld by the Commissioner (Appeals).

2. Learned Advocate on behalf of the appellants submits that the goods were cleared under bond and there is no dispute that the goods were exported and, therefore, unutilized credit would be refunded under Rule 5 of Cenvat Credit Rules, 2004. He submits that on the identical situation the Hon'ble Bombay High Court in the case of Repro India Ltd. vs. UOI & Anrs., reported in 2008 (88) RLT 461 (Bom.) allowed the refund of unutilized Cenvat credit even on exempted goods or goods chargeable to nil rate of duty, exported under bond. He also relied upon the decision of Division Bench of the Tribunal in the case of CCE, Chandigarh vs. Drish Shoes Ltd., reported in 2009 (90) RLT 686 (CESTAT-Del.). He further submits that Singly Member Bench of the

Tribunal on the identical issue in the case of Punjab Stainless Steel Industries vs. CCE, Delhi-I, reported in 2008 (226) ELT 587 (Tri. – Del.) allowed refund claim, which was upheld by the Hon'ble Delhi High Court, as reported in the case of CCE, Delhi-I vs. Punjab Stainless Steel – 2009 (234) ELT 605 (Del.).

3. Learned D.R. on behalf of the Revenue reiterates the finding of the Commissioner (Appeals). He submits that Commissioner (Appeals) in detail discussed the change of Cenvat Credit Rules, 2002 and Cenvat Credit Rules, 2004, whereby refund of unutilized credit under Rule 5 of Cenvat Credit Rules, 2004 was restricted. He also submits that the case law relied upon by the learned Advocate in the case of Repro India would not apply in the present case. It is his contention that in the case of Repro India (supra) the assessee was manufacturing dutiable and exempted goods but, in the present case the appellants are manufacturing only exempted goods.

4. After hearing both sides and on perusal of the records, I find that the appellants exported De-oiled Cake which is chargeable to nil rate of duty. The main contention of the Revenue is that the appellants are engaged in the manufacture of only exempted goods and, therefore, Rule 5 of Cenvat Credit Rules, 2004 would not apply. Learned SDR contended that Rule 5 of the Rules would apply in the context of manufacture of dutiable and exempted goods. I find that this issue has already been decided by the Hon'ble Bombay High Court in the case of

Repro India Ltd. (supra). In the said case the assessee was engaged in the manufacture of printed books which was chargeable to nil rate of duty. The assessee exported printed books entirely and claimed refund of unutilized credit under Rule 5 of Cenvat Credit Rules was allowed. The findings of the Hon'ble High Court are reproduced below:-

"Even though Rule 6(1) of the Cenvat Credit Rules, 2004 provides that no Cenvat credit will be available in respect of the inputs used in the manufacture of exempted products, Rule 6(6)(v) of the Cenvat Credit Rules creates an exemption inter alia in respect of the excisable goods removed without payment of duty for export under bond in terms of Central Excise Rules, 2004 the petitioners are entitled to avail Cenvat Credit in respect of the inputs used in the manufacture of final product being exported irrespective of the fact that the final products are otherwise exempt."

5. Commissioner (Appeals) observed that Rule 6(6) of Cenvat Credit Rules, 2002 indicates the words "exempted goods", which was changed in Rule 6(6) of Cenvat Credit Rules, 2004 with the word "goods removed without payment of duty." It has been observed that Rule 6(6) of Cenvat Credit Rules, 2004 restricted the refund of unutilized credit in respect of inputs used in the manufacture of exempted goods or exempted service. I find that the Bombay High Court in the case of Repro India Ltd. (supra) observed as under:-

"A perusal of the aforesaid Rules would clearly show that sub-rule (i) to (vi) are identical and difference in rule 6(6) of the Cenvat Credit Rules 2004 and Rule 6(5) of the Cenvat Credit Rules, 2002 is not relevant for the purpose of the present case. Rule 6(1), 6(2), 6(3) and 6(4) of the Cenvat Credit Rules under Cenvat Credit Rules, 2002 as well as under the Cenvat Credit Rules, 2004 remains the same. As noted earlier the object and purpose of rule 6(6) of Cenvat Credit Rules, 2004 is to promote the policy of the Government that the benefit of duty paid on input is available as credit in respect of certain exempted goods as well as the exempted goods exported under bond. 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. I have also noticed that in the case of Punjab Stainless Steel Industries (supra) that the assessee exported stainless steel utensils exempted from payment of duty and claimed refund of duty paid on inputs used in exported goods. The Tribunal held that the manufacturer is entitled to refund of the credit of inputs used in exported goods, which was upheld by the Hon'ble High Court.

7. In view of the above discussion, I find that the appellant is eligible for refund of Cenvat credit in exported goods under Rule 5 of Cenvat Credit Rules. The impugned order is not sustainable. Accordingly, same is set aside and the appeal is allowed with consequential reliefs.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK