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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/1084/2007 – SM[BR]   Date 02/03/2009

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

To :
M/S INTERNATIONAL TOBACCO COMPANY LTD.
MEERUT ROAD, GULDHAR, GHAZIABAD-201001
(U.P.)

M/S INTERNATIONAL TOBACCO COMPANY LTD. : Appellant
Vs
C.C.E. GHAZIABAD : Respondent

I am directed to transmit herewith a certified copy of **Final order No. 207 / 2009 - SM[BR]** dated 10.2.2009 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. GHAZIABAD
   C.G. O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD 201302
2. Adv. / Consult
   MR.KACHWAHA & PARTNERS
   1/6, SHANTI NIKETAN NEW DELHI-110021

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 10.2.2009

Central Excise Appeal No.1084 of 2007

Arising out of the order in appeal No.08-CE/GZB/2007 dated 23.1.2007 passed by the Commissioner (Appeals), Customs , Central Excise & Service Tax, Meerut I, Ghaziabad.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant | | Respondent
M/s International Tobacco Company Ltd. | vs. | C.C.E. Ghaziabad

Appearance:

Shri Ashok Sagar with Ms. Anuradha Sharma, Advocates for the appellant
Shri Sansar Chand, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Order No. 207/09-SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 08-CE/GZB/2007 dated 23.1.2007.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) The appellants are engaged in the manufacture of cut tobacco and cigarettes on job work basis for M/s Godfrey Phillips India Ltd. (GPI) and taking credit of duty paid on inuts received by them and using them in the manufacture of final products and clearing the goods on payment of duty back to M/s Godfrey Phillips Ltd. using the credit.

b) In this case, they received a consignment of "Hertz flavouring and casing additive", imported by M/s GPI, directly from the Port, to appellant's premises along with bill of entry and took credit of CVD and education cess paid in respect of the said consignment. It was later noticed that the said bill of entry did not contain necessary endorsement by the Customs officers as envisaged in Board's Circular No.179/13/96-CX dated 29.2.96. The appellant reversed the Cenvat credit amounting to Rs.1,52,433/- on 23.7.05. Subsequently, a show cause notice was issued proposing to confirm the reversal and seeking payment of interest and proposing penalty.

c) The original authority confirmed the credit already reversed; he ordered recovery of interest of Rs.18,165/-. He imposed penalty of Rs.1,52,433/- under Rule 15 of Cenvat Credit Rules read with Section 11AC.

d) Commissioner (Appeals) by the impugned order upheld the order of the original authority.

4. Learned Advocate submits that as a job worker they are paying excise duty of about Rs.1 crore per day. They have been receiving several consignment of inputs from M/s GPI. In a stray case, there was a failure in getting endorsement from the Customs officers while sending the material from the Port to the premises to job worker directly. There was no dispute that the material has suffered duty and that they have received the materials in the factory and utilised the

same in the manufacture. He submits that denial of Cenvat credit is not proper and legal. At any rate, penalty should not have been imposed on them. He relies on the decision of the Tribunal at Ahmedabad in the case of M/s Twenty First Century Printers Ltd.and others vs.C.C.E., Surat II vide order No.A/2150-2152/WZB/Ahd/08 dated 19.9.08 in Appeal Nos.1055, 1056 & 1230/03 wherein in similar circumstances in respect of consignment imported by M/s GPI sent to a job worker the credit has been allowed.

5. Learned DR reiterates the findings of the Commissioner (Appeals). He also adds that while bill of entry is a relevant document for the purpose of allowing Cenvat credit but credit cannot be allowed when the bill of entry is not in the name of the appellant as envisaged in the Board's Circular. He also submits that credit taken is irregular and only when the interest was demanded, they have agitated wrong reversal of the credit.

6. I have carefully considered the submissions from both sides. I find that there is no dispute that the imported materials have suffered duty and that they have been received by the appellant in their premises along with the connected bill of entry. There is apparently some procedural mistake in not getting it endorsed by the Customs officers at the Port of import. They are a major tax payer and were receiving several consignments from M/s GPI and this is a stray case of procedural failure. I hold that omission of this nature cannot lead to denial of credit.

7. In an identical situation, the Tribunal in the case of M/s Twenty First Century Printers Ltd.and others vs. C.C.E., Surat II who have received the material from M/s GPI have held as under:

"2. The facts are that one M/s Godfrey Phillips imported certain goods such as coated board etc. falling under Chapter 48 of the Customs Tariff and cleared the same on payment of appropriate duty. Thereupon they diverted the entire material thus imported to the appellant company took MODVAT credit on the duty paid (CVD). It is the Department's contention that there is no endorsement by the appraiser in the Bills of entry to the effect that the goods in question are being diverted to the appellants company for availment of credit by the recipient , such an endorsement is necessary in terms of Public Notice No.32/99 dated 2.7.99 issued by the Commissioner of Customs, Mumbai. In the impugned order the Commissioner held that availment of such credit in violation of the said Public Notice is irregular. The appeals are a result of this decision.

3. After hearing both the sides, we observe that the only ground on which the credit is denied and penalties imposed that the Bills of entry under which the imported goods were cleared by M/s Godfrey Phillips (India) Ltd. were not endorsed for diversion of the said goods to the appellants' manufacturing unit. The duty paid character of the goods in question was never in doubt. In fact, there is a tacit admission on the part of the revenue that the very same goods on which duty was paid by the importer were received in the factory of the manufacturer (appellant).

4. It is well settled that in the absence of any doubt about the duty paid character of the inputs that received in the factory and their utilisation in the manufacture of final products, cleared on payment of duty, the denial of credit on the technical and procedural grounds is not called for. The Hon'ble High Court of Gujarat in the case of M/s Vimal Enterprises vs. UOI – 2006 (195) ELT 267 (Gujarat) has observed that the entire endeavour of the Revenue should be to make the scheme effective and not deny the beneficial

provisions on the basis of technical breaches. As such, we find no justification for denial of credit or for imposition of penalty. Hence, the impugned order is accordingly set aside and all the appeals are allowed with consequential relief to the appellants".

8. In the light of the above, I hold that denial of Cenvat credit is not justified. Therefore, the appeal is allowed with consequential relief as per law.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

scd/