

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/1346/2007 – SM[BR]

Date 18/11/2009

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

To :
M/S BRITANNIA INDUSTRIES LTD.
33, LAWRENCE ROAD, INDUSTRIAL AREA, DELHI-
110035
M/S BRITANNIA INDUSTRIES LTD.

Appellant

Vs
Respondent

C.C.E. DELHI I

I am directed to transmit herewith a certified copy of **Final order No. 1440 / 2009 –SM[BR]** dated 10.11.2009
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 I

C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002

2. Adv. / Consult

MR.R. KRISHNAN

297-E, POCKET-II, PHASE-I, DELHI-110 091.

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)

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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: 10.11.2009

Central Excise Appeal No.1346 of 2007-SM

Arising out of the order in appeal No.08/CE/DLH/2007 dated 8.2.2007
passed by the Commissioner (Appeals), Central Excise, Delhi I.

For Approval and Signature:

Hon'ble Shri 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?	Yes
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

Britannia Industries Ltd.

Appellant

Vs.

C.C.E., Delhi I
Appearance:

Respondent

Shri R. Krishnan, Advocate for the appellant
Shri S.K. Bhaskar, Authorized Departmental Representative (SDR) for the Revenue

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

Oral Order No. 1440/2009 SM(Br)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 08/CE/DLH/2007 dated 8.2.2007.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants are manufacturer of biscuits and they have received sugar directly from the manufacturer and occasionally from the dealers and have been availing Cenvat credit of duty paid on the sugar. A Circular by CBEC dated 6.3.2003 was issued permitting the credit of AED (GSI) in respect of the inputs received from 1.4.2000. An amendment to Rule 3 of the Cenvat Credit Rules was made on 1.3.2004

giving retrospective application to the amendment granting Cenvat credit of AED (GSI). The appellant received supplementary invoices on 30.8.2003 and availed AED (GSI) in respect of sugar procured from the dealers during the period 2000-01 to 2002-03. A show cause notice was issued alleging that the supplementary invoices issued by the dealers are not covered under Rule 7 of the Cenvat Credit Rules as specified documents for the purpose of availing the Cenvat credit and therefore, they are not eligible for the same. The original authority accordingly disallowed the credit of Rs.6,66,108/- along with interest and also imposed equal amount as penalty. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that they are a major manufacturer of biscuits and pay substantial amount as central excise duty every year. They are generally procuring sugar from the manufacturer and the invoices issued by the manufacturers indicated clearly the break-up of basic excise duty and the AED (GSI). However, during the period 2000-01, 2002-03, they had availed credit only in respect of basic excise duty paid on the sugar. However, the intention of the Government was made clear by the Circular dated 6.3.2003 issued by Board and accordingly the credit of AED (GSI) was availed by them subsequently. Though there was dispute on AED credit on sugar procured from manufacturer, the same was allowed by the same order of the original authority. The present dispute is only in respect of supplies received from the dealers. The invoices issued by the dealers were for an amount naturally including the entire excise duty amount and other expenses and profit of margin of the dealers. However, during the relevant period, as only BED was eligible as credit, the said dealers have not specifically indicated the AED(GSI) in the invoices issued by them. However, they gave reference of the original invoices of the manufacturers under which the duty has been paid by the said manufacturers of sugar. Consequent to clarification of the Board dated 6.3.2003, the appellants have taken credit of AED (GSI) in respect of sugar procured from the dealers as well. The original authority denied the credit on the ground that Rule 7 does not refer to supplementary invoices by the dealers as relevant documents. It was also

found by the authorities that along with any supplementary invoices, no goods have been received by them. He submits that both these grounds are not valid. The invoices supplied by the manufacturer or by the dealers are issued in terms of Rule 11 of the Central Excise Rules, 2002. Rule 11 (7) of the Central Excise Rules specifically states that the said provisions are applicable to first stage and second stage dealers as they are applicable to the manufacturer. He also submits that the invoices of the dealers are to be treated as invoices issued under Rule 11 of the Central Excise Rules, 2002.. In the present case, as the dealers inadvertently have not indicated the AED(GSI) which during the relevant period was not admissible as Cenvat credit, they issued supplementary invoices supplementing information given in the original invoices. As there is no dispute that subsequent to amendment dated 1.3.2004 to Rule 3 of Cenvat Credit Rules, AED (GSI) is eligible for the grant of credit and that appellants have received the goods from the dealers under their invoices which gave reference to the manufacturer's invoices, the credit should not be denied with reference to the supplementary invoices. He also submits that Rule 7 does not exclude the other situation for issue of supplementary invoices. He also relies on the decisions of the Tribunal permitting credit based on TR-6 challans though the said document is not referred in Rule 7 of Cenvat credit Rules. He, further submits that the question of imposition of penalty does not arise as the Board issued clarification in 2003 permitting retrospective availment of Cenvat credit on AED (GSI) followed by the amendment of Rule 3 of Cenvat Credit Rules in 2004.

5. Learned SDR submits that the supplementary invoices by the dealers are not recognised in Rule 7 of the Cenvat Credit Rules and the concession has to be given strictly in terms of the said Rule and therefore, he seeks upholding of the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. It is not in dispute that the AED (GSI) paid on sugar is eligible as Cenvat credit in view of retrospective amendment of Rule 3 of the Cenvat Credit Rules. It is also submitted by the learned Advocate for the appellants that the original

invoices issued by the dealers have reference to the invoices of the manufacturer. On the basis of the said invoices, BED portion which was specifically indicated has already been availed as credit which is not in dispute. The invoices as well as supplementary invoices of the dealers are to be construed as having been issued under rule 11 of the Central Excise Rules, 2002 as submitted by the learned Advocate for the appellants. It is noticed that conscious decision have been taken to allow credit of AED (GSI) by amending the Rules retrospectively. The omission by the dealers in not mentioning the AED in the invoices has to be viewed in the context of providing law not permitting the credit of AED. Therefore, I hold that the appellants shall be eligible for the Cenvat credit of the AED (GSI) paid by the manufacturer in respect of consignments in question. However, the fact of payment and the quantum of AED (GSI) as mentioned in the supplementary invoices has to be verified with reference to the documents referred to by the appellants.. In the given facts and circumstances of the case, which involved a conscious amendment to give retrospective benefit of credit of AED (GSI), the question of imposition of penalty does not arise.

7. In view of the above, the appeal is disposed of as follows:

- a) Penalty is set aside.
- b) The matter is remanded to the original authority to allow the credit of AED (GSI) with reference to the supplementary invoices issued by the registered dealers subject to verification of particulars of manufacturer's invoices referred in the original invoices of the registered dealers. The original authority will issue order after granting reasonable opportunity of hearing to the appellants.

(M. Veeraiyan)
Member (Technical)

scd/