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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/854 /2009 – SM[BR]** Date **24/06/2011**

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S SHREE SHYAM FILAMENT LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 339 / 2011-SM[BR]** dated 15.6.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S SHREE SHYAM FILAMENT LTD.
N.H.8, BAGRU RAVAN, BAGRU,
JAIPUR, (RAJASTHAN)

2. Adv. / Consult SHRI BIPIN GARG ADV.
B-1/1289-A, VASANT KUNJ NEWDELHI-70.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
SINGLE MEMBER BENCH
Court No.III

Excise Appeal No.E/854/09-SM

(Arsing out of Order-in-Appeal No.06-07(DK)CE/JPR-I/2009 dated 22.1.2009 passed by the CCE (A), Jaipur)
For approval and signature:

Hon'ble Mr.M.Veeraiyan, 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?	Yes
2	Whether it should be released under Rule 27 of the 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

CCE, Jaipur-I — Appellants

Vs.

M/s.Shree Shyam Filament Ltd. — Respondent

Present for the Appellant: Shri S.K.Bhaskar, SDR
Present for the Respondent: Ms.Sukrit Das, Advocate

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

Date of Hearing: 15.06.2011
Date of Decision: 15.06.2011

Final **ORDER NO.** 339/2011 SM (Br)

PER: M.VEERAIYAN

This is an appeal by the department against the order of the Commissioner (Appeals) No. 06-07(DK)CE/JPR-I/2009 dated 22.1.2009 by which the orders of original authority sanctioning refund have been upheld.

2. Heard both sides.

3. The respondent is a manufacturer of poly propylene filament yarn and they are exporting the final product. Some of the inputs, they have procured on payment of duty and taken credit. After exporting the goods, they preferred refund claims for the quarter of October, 2006 to December, 2006 and for the quarter January, 2007 to March, 2007 the original authority sanctioned the claims amounting to Rs.2,22,994/- and Rs.2,24,032/-. The department filed appeal against the order of the original authority on the ground that the original authority has not done necessary exercise to see compliance of the condition No.4 of Notification No.5/2006-CE (NT) dated 14.3.06 relating to procedure for payment of refund has not been done. It was also claimed before the Commissioner (Appeals) that the respondents might not have taken credit as exports were made under advance licence scheme. The Commissioner (Appeals) did not agree with the contentions and dismissed the appeal. The department is in appeal against the concurrent findings of the original authority and the Commissioner (Appeals) which are in favour of the assessee.

4. Learned SDR reiterates the grounds of appeal. He also relies on the Board's Circular No.84/88 dated 20.12.1988 which envisages input/output in implementing the scheme under Rule 191-B in respect of articles covered by intermediate licensing.

5. Learned Advocate for the respondents strongly supports the order of the Commissioner (Appeals). She submits that only the

actual credit taken corresponding to the concerned quarter has been refunded by the original authority and the order has been rightly upheld by the Commissioner (Appeals).

6. I have carefully considered the submissions made from both sides and perused the records. The contention of the department that there was likelihood that no credit would have been taken on the inputs as the exports were made against the advance licence have been rightly disregarded by the Commissioner (Appeals). When the credit has been taken found to have been based on the documents, to say that the respondents would not have taken the credit without adducing any evidence to the contrary cannot be appreciated. The Commissioner (Appeals) has held that in the order of the original authority there is clear quantification of input credit in respect of goods which were exported during the said quarter. He also observed that the review order did not challenge the categorical finding of the adjudicating authority. In the grounds of appeal before the Tribunal also there is no averment that credit in excess of what is attributable to export during the two quarters have been sanctioned as refund. In view of the categorical findings of the original authority which stands upheld by the Commissioner (Appeals), this vague ground does not merit consideration.

7. It is not being disputed that the respondents have exported the final product and they were entitled to credit taken by them and that the credit was accumulated in view of the export. There is no need to go into sion norms when the credit has been based on actual receipt of inputs. There is no ground raised claiming that

there is any wide variation between the credit actually taken and the credit that would be available if sion norms were to be applied.

8. Reliance placed on the circular of the Board which was issued in the context of Rule 191-B has no relevance to the facts of the present case.

9. No valid grounds have been adduced for interference with the concurrent finding of the authorities below which are in favour of the assessee. The appeal is therefore rejected.

(Pronounced in the open court)

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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