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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/1727/2009 – SM[BR] **Date 09/09/2011**

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

To :
C.C.E. DELHI IV
NEW CGO COMPLEX, NH-IV, FARIDABAD,
HARYANA 121001.

C.C.E. DELHI IV Appellant

Vs

M/S JADE KNITS Respondent

I am directed to transmit herewith a certified copy of **Final order No. 589 /2011-SM[BR]** dated 25.8.2011 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 JADE KNITS
12/1,MATHURA ROAD,
FARIDABAD(HR)

2. Adv. / Consult
None:----------------

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. 2, R.K. Puram, NEW DELHI

COURT No. II

Excise Appeal No. 1727 of 2009(SM)

[Arising out of Order-In-Appeal No.26&27/CE/APPL/DLH-IV/2009, dated 16.03.2009 issued by CCE, Delhi-I].

Date of Hearing / Decision : 25.08.2011

For approval and signature:
Hon'ble Mr. D.N.Panda, Judicial Member

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?	

CCE, Delhi-IV — Appellant
Faridabad
Versus
M/s Jade Knits — Respondent

Coram: Hon'ble Mr. D.N.Panda, Judicial Member

Present for the Appellant – Shri Anil Khanna, DR
Present for Respondent – None

Final **Order No.** 589/2011 SM BR **Dated :**

Per D.N. Panda:

None present for the respondent.

2. Ld. DR submits that the respondent was also making DTA sales while exporting. When unutilised Cenvat credit was claimed

to be refunded, that called for examination to ascertain quantum of input meant for utilization in exported goods. The respondent failed to prove that the input credit claimed to be refunded was attributable to the input used in exportable goods. The Notification No.5/2006/CE(NT), dated 14.3.2006 has regulatory measure. Para 4 of the Notification is to be complied to prove that the claimant is not in a position to utilize the input credit during the given period. This clearly demonstrates that burden of proof is on the assessee. His further submission is that the refund should be restricted to the extent of ratio of export turnover to the total turnover. Essential requirements of the Notification cannot be given gobye by authorities below. Without speaking order, authorities below arbitrarily dealt the matter. Therefore, Revenue's prayer is to allow its appeal.

3. Heard Ld. DR.

4. Submission of Revenue has force when the un-reasoned order came from both the authorities. Objective analysis is required by the Notification. That is absent in the impugned order. Rather presumptively the appellate authority proceeded to say that the appellant had utilized the input for exportable goods and unutilised Cenvat Credit also relates to such activity. There has been no analysis made on the input used in manufacture of goods meant for DTA sales and goods meant for export. Without any resortation to objective analysis, refund was granted mechanically. The matter should, therefore, go back to the

appellate authority below to record facts leading to matter in controversy and test whether refund arises. If the respondent fulfills the requirement of Notification by objective analysis, there may not be difficulty to entertain the claim. Consequently, Revenue's appeal is allowed by way of remand.

(Dictated and pronounced in the Open Court)

(D.N.Panda)
Judicial Member

RK-I