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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/2086/2009 , 2499 / 2009-SM[BR]** Date **12/09/2011**

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

**1.HANUMAN CROMOCOATES LIMITED**
**2.HANUMAN CROMOCOATES LIMITED**

BOREGOAN INDUSTRIAL AREA, BOREGOAN TEHSIL
**SAUNSAR, DISTT- CHHINDWARA(MP)**
**HANUMAN CROMOCOATES LIMITED** Appellant

Vs

**C.C.E BHOPAL** Respondent

I am directed to transmit herewith a certified copy of **Final order No.595-596/2011-SM[BR]** dated 23.8.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

**Copy to :**

1. Respondent
**C.C.E BHOPAL**
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

2. Adv. / Consult SHRI P.C. KASHIV ADV.
E-3/49 KAMDAR MARKET BHOPAL [M.P.]

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

**Excise Appeal Nos. E/2086/09-SM**
**Excise Appeal Nos. E/2499/09-SM**

[Arising out of Order-in-Appeal No.145 & 146/BPL/2009 dated 20.2.2009 passed by the Commissioner (Appeals), Bhopal].

M/s.Hanuman Cromocoates Limited ...Appellant

Vs.

CCE, Bhopal ... Respondent

Present for the Appellant : Shri P.C. Kashiv, Consultant,
Present for the Respondent:Shri.D.K. Panda, JCDR

**Coram: HON'BLE MR. D.N. PANDA, JUDICIAL MEMBER**

**Date of Hearing/Decision:23.08.2011**

Final **ORDER NO.** 595-596/2011 SM (BR) **DATED:**________

**PER: D.N.PANDA**

On behalf of appellant it was argued that when the appellant's head office is in Calcutta and factory is situated in Boregoan Industrial Area, Distt. Chhindwara of Madhya Pradesh the invoices showing payment of service tax either in the name of head office or in the name of factory should be considered for grant of input credit. He drew attention to certain insurance premium paid as per copies of document available at page 36 and 55 of the appeal folder and security charges paid as per copy of document available at page 66 of the order to submit that these documents specify name of the factory for which cenvat credit should be allowed. His further submission is that the Commissioner (Appeals) in terms of his order dated 23.2.2011 in appeal No. 39/BPL/2011 & 40/BPL/2011 has observed that there was only one head office but the documents not being in the name of unit it was held that the appellant shall not be entitled to the cenvat credit of the input services. He relies on the decision in the case of CCE, Vapi vs. DNH Spinners reported in 2009 (244) ELT 65 (Tri. Ahmd.) to buttress the claim.

2. Ld. DR on the other hand says cenvat credit cannot be claimed as a matter of right. Requirement of law is to be fulfilled both under Cenvat Credit Rules 2004 and Service Tax Registration of Special Category of Persons Rules, 2005 to claim the benefit adducing evidence and satisfying the authorities in respect of eligibility and admissibility of the claim. According to Revenue there may not be denial of input credit service if a service distributor is known to law in terms of Rule 2(m) of Cenvat Credit Rules, 2004. But such service distributors are required to be registered so that appropriate credit can be passed on by them to the beneficiary subject to scrutiny by Revenue. In the present case there is no finding

by the authority as to whether the head office is a real service distributor and the factory of the appellant in Madhya Pradesh is beneficiary. Giving go bye to the Rules of 2005, the authority decided appeal of the appellant in its favour by order dated 23.2.11. Whether one office is registered or not needs scrutiny. Admissibility of the claim was not scrutinised in Adjudication. He exemplifies that the telephone bills whether are attributable to the manufacturer needs scrutiny.

3. The appellant at this stage prays that the matter should go back to the Original Authority and he should decide the claim of the appellant after scrutiny passing appropriate order.

4. Heard both sides and perused the record.

5. It may be stated that any exemption cannot be claimed a matter of right. Unless and until a strict terms of law is complied with, exemption cannot be granted as public revenue is sacrificed by grant of exemption. Revenue owes a duty to ask about eligibility and manner of claim as well as admissibility thereof and Assessee has burden to proof its claim. Legislature have thoughtfully designed the manner how claim should be made for which they have laid down the procedure under Rule 9 of the Cenvat Credit Rules, 2004. Document which is not known to the law shall not entitle any relief to a claimant. Public interest always weighs heavier than the

private interest. Framing of the rule relating to registration of input service distributor registration is to safeguard public interest. The safeguard measure provided by Rule 3 of service tax registration of Special Category of Persons Rules, 2005 is also to protect interest of Revenue. It appears from rule 3 that Revenue gets proper opportunity to know who shall be beneficiary to get the benefit of input service distributor. The appellant has not satisfied to this extent. Appellant's reliance on the decision of Tribunal in the case of DNH Spinners is on different premises. In that case on the reasoning was that there is no dispute about the input service received by the assessee for which relief was granted. That decision has not examined the fact whether the appellant is entitled to the relief meeting the test of admissibility of the claim. Therefore the Appellant cannot get benefit of that decision.

6. The appellant also relied on other two decisions of the Appellate Commissioner who dealt the assessee by order dated 23.2.11. It is very strange how a view has been taken by the first appellate authority, when he did not make any enquiry as to whether the claim made by the appellant has at any time been claimed by the appellant's head office or any other interconnected concern in any manner. This is clearly against the public interest and Revenue's interest appears to have been paralysed.

7. When the Prayer of the appellant is that the matter should go back for examining the issue, there is no hesitation to send the matter back for appropriate decision in the light of the law enacted in Cenvat Credit Rules, 2004 and also the Special Category of Persons Rules, 2005. The appellate order also no where discloses the extent of examination done by authority below. It is necessary to ascertain first whether the head office at Calcutta has really incurred the expenses to pass on the credit to the appellant. Secondly, it is also necessary to ascertain whether the head office has taken any service tax registration to distribute the credit. Thirdly, it is also required to ascertain whether the head office of the appellant is falling under section 2(m) of Cenvat Credit Rules 2004 as input service distributor. Fourthly, it is required to ascertain that whether the appellant's head office is required to seek any registration under Service Tax (Registration of Special Category of Persons) Rules, 2005. Public Revenue always need protection. While exemptions are granted at public interest, certain safeguard measures prescribed by notification have to be fulfilled. If the appellant has led evidence about the claim in accordance with law and such a claim was to serve the purpose of manufacture or in relation to manufacture or for providing taxable output service the appellant shall only be entitled to the input credit.

8. With the aforesaid observation and depiction of law, both the matters are remanded to the original authority for re-adjudication granting fair opportunity of hearing to the appellant, and to pass a reasoned and speaking order on all the aforesaid aspects of safeguard measures of Revenue.

9. At the end, ld. Consultant submits that the question of service distribution does not arise, when there is only one head office. There is nothing to dilate the matter further for the reason that enquiry by adjudicating authority is necessary, as to claim of the appellant whether at any time been claimed elsewhere.

[Dictated & Pronounced in the open Court].

**(D.N.PANDA)**
**JUDICIAL MEMBER**

Anita