

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/3043/2009 – SM [BR] E/CO/60/2010
E/3098/2009-SM[BR] E/CO/65/2010 E/COD/114/2010
E/3099/2009-SM[BR] E/CO/66/2010 E/COD/115/2010-SM[BR]

Date 16/11/2011

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

To: M/S MULTI MERCANTILE,

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I

Appellant

Vs
Respondent

dated 31.10.2011

Assistant Registrar
(SM Appeal Branch)

M/S VANASTHALI TEXTILE INDUSTRIAL AREA,

I am directed to transmit herewith a certified copy of Final order No. 788-790/2011-SM[BR]
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Copy to :

1. Respondent
1. M/S VANASTHALI TEXTILE INDUSTRIAL AREA,
2. M/S VANASTHALI TEXTILE INDUSTRIAL AREA,
3. M/S VANASTHALI TEXTILE INDUSTRIAL AREA,
INDUSTRIAL AREA,
SHAHJAHANPUR, DISTRICT:
ALWAR (RAJASTHAN)
2. Adv. / Consult SHRI R.KRISHNAN ADV.
297-E, POCKET-II, MAYUR VIHAR PHASE-I
DELHI-91.
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publications 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 (Harvana)
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.3

Excise Appeal No.3043/09 and E/CO/60/2010

Excise Appeal No.3098/09 and E/CO/65/2010,E/COD/114/10

Excise Appeal No.3099/09 and E/CO/66/2010,E/COD/115/10

(Arising out of Order-in-Appeal No.252(DK)CE/JPR-I/2009 &
No.251(DK)CE/JPR-I/2009 dt.30.9.09 and No.260(DK)CE/JPR-I/2009
dt.8.10.09 passed by the CCE(A), Jaipur-I)

Date of Hearing/Decision: 31.10.2011

For approval and signature:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

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, Jaipur-I

Appellant

Vs.

M/s.Vanasthali Textile Industries Ltd.

Respondent

Present for the Appellant: Shri Fateh Singh, SDR

Present for the Respondent: Shri R.Krishnan, Advocate

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)

Final ORDER NO. 788-790/2011 SM(Br)

PER: ARCHANA WADHWA

All the appeals stand filed by the Revenue against the same respondent and as the issue involved is identical, the same ^{are} being disposed of by a common order. Further, the respondents

have filed cross objection alongwith COD applications. However, I find that the impugned orders passed by the Commissioner (Appeals) are entirely in favour of the respondents and as such, there is no need of filing the cross objections. Learned Advocate appearing for the respondents has clarified that the said cross objections are in the nature of written submissions. Inasmuch as there is no time limit for filing written submissions, COD applications are not called for. The same are accordingly dismissed as infructuous.

2. As regards the Revenue's appeals, it is seen that the respondents are 100% EOU engaged in the manufacture of Terry Towels. They were filing refund claim accumulated in terms of the provisions of Rule 5 of Cenvat Credit Rules, 2004. While scrutinising the refund claim, Revenue noticed that they had taken ~~of~~ modvat credit of service tax² paid on freight and handling charges (outward) i.e. actually rail freight paid to the Container Corporation of India ^{and} instead credit was availed in respect of services of clearing agency, which was primarily engaged in the documentation and charges of export/shipment at the port area.

3. Revenue entertained a view that the freight for outward transportation of the goods upto the port area and the clearing agency charges are not included in the input service definition, having been incurred after removal of the goods from the factory place and as such, the credit of the same was not available. As a result, refund of such credit in terms of Rule 5 ibid is not admissible to the respondents. Accordingly, the proceedings were initiated

against them which culminated into an order passed by the authorities below disallowing the credit alongwith ^{confirmation} of ^{interest} imposition of penalty. On appeal against the above order, the appellate authority took into consideration the various decisions of the Tribunal as also the Board's Circular No.97/8/2007-ST dt.23.8.07 and held that in case where export is on FOB basis, place of removal shall be load port and price included the transportation charges from the factory to load port. Inasmuch as the place of removal is load port, the charges incurred upto that area would be ^{entitled} ~~extended~~ to be considered as input service and as such is available for credit. For the above purpose, he ^{relied} upon the decision in the case of Kuntal Granites Ltd. vs. CCE-2007 (215) ELT 515 (Tri.) as also on the Larger bench decision in the case of ABB Ltd. vs. CCE-2009 (15) STR 23 (Tri.-LB) laying down that services availed by the manufacturer for outward transportation of final product upto the place of removal should be treated as input service in terms of Rule 2 (1) (ii) of Cenvat Credit Rules, 2004, thereby enabling the manufacture to take credit on the service tax paid on such services. Accordingly, he set aside the impugned order and allowed the appeal. Hence the present appeal by the Revenue.

4. After hearing both sides duly represented by Shri Fateh Singh, learned SDR appearing for the Revenue and Shri R.Krishanan, learned Advocate, I find that the issue is no more res integra and stands settled by the various decisions of the Tribunal. Reference can be made to the following:-

1. CCE, Rajkot vs. Adani Pharmachem P.Ltd.-2008 (232) ELT 804 (Tri.-Ahmad)
2. Somaiya Organo Chemicals vs. CCE, Aurangabad-2011 (21) STR 114 (Tri.-Mumbai)
3. CCE. Nagpur vs. Ultratech Cement Ltd.-2010 (260) ELT 369 (Bom.)

5. In view of the above, I find that the issue stands decided by the larger bench judgement relied upon by the Commissioner (Appeals). The Revenue in their memo of appeal have nowhere distinguished said judgement or doubted the applicability of the same to the facts of the present case. The said judgement of the larger bench stands confirmed by the Hon'ble Karnataka High Court reported in 2011 (23) STR 97 (Kar.). Inasmuch as the issue is no more res integra and stands settled in favour of the respondents, I find no merit in the Revenue's appeals. The same are accordingly rejected. The COD applications, cross objections filed by the Respondents and Revenue's appeals are also disposed of in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 08.06.2011

Excise Appeal No. 3043/09 and E/CO 60 of 2010
Excise Appeal No. 3098/09 and E/CO 65 of 2010, E/COD 114/10
Excise Appeal No. 3099/09 and E/CO 66/10, E/COD No. 115/2010

CCE, Jaipur

Appellants

Vs.

M/s Vanasthali Textile Industries Ltd.

Respondent

Appearance:

Rep. by Sh. K.P. Singh & Ms. . R.J. Parsad, DRs for the appellants.

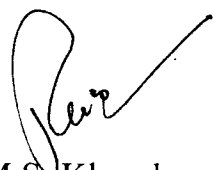
Rep. by Sh. R. Krishnan, Advocate for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President

ORDER NO.

Per: Shri Justice R.M.S. Khandeparkar:

It is informed that Advocate Shri R. Krishnan is indisposed, matters, therefore, are adjourned to 29.06.2011.


(Justice R.M.S. Khandeparkar)
President

Pant