16

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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/1087 – 1089 /2007 , E / 1149 – 1159 / 2007 –SM[BR] **Date** **29/11/2011**

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

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

Vs

M/S PARAS TEXTILE INDUSTRIES Respondent

I am directed to transmit herewith a certified copy of **Final order No. 821 – 834 /2011-SM[BR]** dated 4.11.2011 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
(1-3) **M/S PARAS TEXTILE INDUSTRIES**
32-34, INDUSTRIAL AREA, PALI
(RAJASTHAN)

[4-5] **M/S VINOD INDUSTRIES ,**
F-220-221, MANDIA ROAD PALI [MARWAR]

[6-14] **M/S BANSWARA SYNTEX LTD.**
BANSWARA [RAJASTHAN]

2. Adv. / Consult **SHRI K.K. ANAND ADV.**
A-5, BASMENT LAJPAT NAGAR-III,
NEW DELHI-24.

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 (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.1087-1089/07-SM
Excise Appeal No.1149-1159/07-SM

(Arising out of Order-in-Appeal No.698-828(HKS)CE/JPR-II/2005 dt.1.12.05 and No.856-875(HKS)CE/JPR-II/2005 dt.14.12.05 passed by the CCE(A), Jaipur-II)

Date of Hearing/Decision: 04.11.2011

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?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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-II — Appellant

Vs.

M/s.Paras Textile Industries — Respondent
M/s.Vinod Industries
M/s.Banswara Syntex Limited

Present for the Appellant: Shri Fateh Singh, SDR
Present for the Respondent: Shri K.K.Anand, Advocate

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

Final **ORDER NO.** 821 – 834 / 2011 SM(BR)

PER: ARCHANA WADHWA

All the appeals filed by the Revenue are being disposed by common order as they arise out of same impugned orders passed by the Commissioner (Appeals) and the issue involved is identical. I have heard Shri Fateh Singh, learned SDR appearing for the

Revenue and Shri K.K.Anand, learned Advocate appearing for the respondents.

2. As per facts on records, the respondents are engaged in the processing of cotton fabrics, which are being exported by them. They filed rebate claim under Rule 18 of Central Excise Rules, 2002 on the ground that the processed cotton fabric stands exported by them on payment of duty. The said processing of cotton fabric was being undertaken by the respondents on job work basis on behalf of the merchant exporters. The duty on the said processed cotton fabric was paid by the respondents from the accrued deemed credit in terms of Notification No.53/2001-CE (NT) dt.29.6.01 and 6/2002-CE (NT) dt.1.3.02.

3. The Revenue entertained a view that since the processing of cotton fabric was being done from the grey fabrics, which were non duty paid, credit of duty paid on yarn, dies, chemical and packing material etc. used in the manufacture of grey fabrics, cannot be availed by the processors of the grey fabrics. Accordingly it was found that the wrongly availed credit was not available for payment of duty on the final processed fabric.

4. In view of the above, the proceedings were initiated against the respondents proposing denial of rebate claim. The show cause notices so issued were adjudicated by the AC/DC who dropped the same and sanctioned the rebate claim.

5. The Revenue being aggrieved with the said orders, filed the appeals before the Commissioner (Appeals). The appellate authority rejected the appeal of the department on the ground that the

deemed credit was available to the manufacturer of textile fabrics to compensate the duty incidence on yarn, dyes, chemicals and packing material; that since the grey fabric was exempted from central excise duty, the manufacturer of grey fabrics was not in a position to avail actual cenvat credit of duty paid on yarn and other goods used in the manufacture of grey fabrics; that the yarn, dyes & Chemicals have been declared as inputs in Notification No.53/2001-CE (NT) dt.29.6.01 and 6/02-CE (NT) dt.1.2.02 and cotton fabrics have been declared as final products in the said notification; that though yarn was not directly used by the processors for the processing of the final products, the same was contained in the grey fabrics used in the processing and as such satisfies the condition given in the rule 57A(2) and Rule 11 of Cenvat Credit Rules, 2002. The appellate authority has also relied upon the judgement of the Tribunal in the case of Mangal Textiles Mills Pvt.Ltd. vs. CCE-2003 (54) ELT RLT 282 (Tri.) and Board's Circular No.243/77/96-CX, dt.3.9.96.

6. Inasmuch as the said orders of the Commissioner (Appeals) upheld the orders of the Assistant Commissioner granting rebate claim, the Revenue feeling dissatisfied with the same, preferred the present appeals.

7. After hearing learned SDR as also the learned Advocate and going through the grounds of appeal preferred by the Revenue, I find that there is no whisper of the fact that law declared by the Tribunal in the case of Mangal Textiles Mills Pvt.Ltd. relied upon by the Commissioner (Appeals) would not be applicable to the facts of the present case. The issue involved in the case of Mangal Textiles Mills Pvt.Ltd. is the same as involved in the present case and as such the

ratio declared in the said case would be fully applicable to the facts of the present case. I also note that subsequently identical dispute stands settled by the Tribunal in favour of the assessee in the case of CCE, Ahmedabad vs. Suzuki Synthetics-2008 (222) ELT 279 (Tri.-Ahmd.), wherein it was held that credit of duty paid on yarn, chemical and other inputs used in the manufacture of grey fabrics, which are further inputs for the processed fabrics, would be available to the manufacturer of processed fabrics. To the similar effect is another decision of the Tribunal in the case of Delite Processors vs. CCE, Noida-2009 (243) ELT 731 (Tri.-Del.) laying down that the processor is entitled to deemed credit of duty on non-duty paid grey fabrics as duty paid yarn was present in final product even though it was not directly used for processing of the fabrics. Further in the case of Damini Printers (P) Ltd. vs. CCE, Noida-2005 (191) ELT 653 (Tri.-Del.), it stands held that the deemed credit is available in respect of grey fabric brought in the factory for processing. Reference can be made to another decision of the Tribunal in the case of CCE, Jaipur-II vs. Bohra Synthetics P.Ltd.-2008 (230) ELT 533 (Tri.-Del.).

8. Inasmuch as the issue stands decided by the various decisions of the Tribunal, I find no reason to take different view. Accordingly, the impugned orders are upheld and the appeals filed by the Revenue are rejected.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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