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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/847 /2008 – SM[BR] Date 16/03/2010

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

To :
M/S J.R.HERBAL CARE INDIA LTD..
A-63, SECTOR-64,NOIDA-201301.

M/S J.R.HERBAL CARE INDIA LTD.. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 332 / 2010 –SM[BR] dated 16.3.2010 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. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MRVISWANATH SHUKLA ADV.
   M/S APPELLANT;----------------------
3 S.D.R
4 ~~J.C.D.R~~.
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise. I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal No.847/08-SM

[Arising out of Order-in-Appeal No.121/CE/APPL/Noida/08 dt.18.1.2008 passed by the Commissioner(Appeals),Noida)

For approval and signature

Hon'ble Mr. Rakesh Kumar, 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?

2.Whether it would 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 : Department Authorities:

M/s. J.R.Herbal Care India Ltd. Appellant

Versus

CCE, Noida Respondent

Appearance

Sh. Vishwanath Shukla, Adv. for Appellant

Sh. S.N.Srivastava,SDR For Respondent

Date of Hearing: 16.2.2010
Date of Decision: 16/3/2010
Order No.

Final ORDER No: 332/2010-SM(BR)

Per Rakesh Kumar:

The Appellant are manufacturer of Herbal Cosmetics chargeable to Central Excise Duty under Chapter 33 of the Central Excise Tariff. They are registered with Central Excise

Department since 30.6.05 and are availing Cenvat credit facility. The Appellant vide their letter dt.29.8.05 informed that they had started manufacture of herbal cosmetics from 1.8.04 but since their clearances during 2004-05 were below to rupees one crore, they did not obtain registration; that they took Central Excise Registration on 30.6.05 as soon as their clearances crossed Rupees one crore and that they intend to avail Cenvat credit of duty on capital goods purchased during July'03 – June'04 period. The Appellant took capital goods Cenvat credit of Rs.1,77,116/- on 30.8.05 (equivalent to 50% of the total duty on the capital goods) and took balance 50% credit of Rs.1,77,116/- on 30.10.05. A show cause notice dt.21.8.06 was issued to the Appellant for recovery of the Cenvat credit of Rs.3,54,232/- alongwith interest and also imposition of penalty on them under Rule 15 of the Cenvat Credit Rules,2004 (CCR,2004). The capital goods cenvat credit in respect of the machines claimed to have been purchased during July'03 – June'04 period was sought to be denied on the ground that since the capital goods had been received prior to 10.9.04, in terms of the provisions of Rule 3(1) of Cenvat Credit Rules,2004, the Cenvat credit was not available.

1.1 The show cause notice was adjudicated by the Asstt. Commissioner vide order-in-original dt.19.5.07 by which the cenvat credit demand was confirmed alongwith interest and penalty of equal amount was imposed under Rule 15 of CCR,2004. The Asstt. Commissioner denied the capital goods cenvat credit on the grounds that -

(a) the capital goods were received in the factory during July'03 – June'04 period when Cenvat Credit Rules,2002(CCR,2002) were in force but since the Appellant were not registered with Central Excise at that time, they were not eligible for Cenvat credit; and

(b) when the appellant were not eligible for Ist instalment of capital goods cenvat credit, the question of taking Cenvat credit of the balance amount does not arise.

1.2 On appeal to Commissioner of Central Excise(Appeals), the Assistant Commissioner's order was upheld vide order-in-appeal No.12/CE/APPL/Noida/08 dt.18.1.08 on the same ground.

1.3 Against the above order of Commissioner of Central Excise(Appeals), the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Vishwanath Shukla, Advocate, the learned Counsel for the Appellant, pleaded that since the capital goods had been received during July'03 – June'04 period i.e. during 2003-2004 and 2004-2005 period and capital goods cenvat credit in respect of these capital goods ~~were~~ was available in terms of CCR,2002, the capital goods cenvat credit earned by the Appellant in terms of the provisions of CCR,2002 was available to the Appellant on 30.6.05 in terms of the transitional provisions of Rule 11(1) of CCR,2004, that availability of capital goods cenvat credit has nothing to do with Central excise registration; that during the period when the capital goods were received, the Appellant being manufacturer of excisable goods, were eligible for capital goods Cenvat credit; that since they were availing the SSI exemption notification based on value of clearance in a financial year, the provisions of Rule 6(4) are not attracted, that since in respect of capital goods received during 2004-05, 50% of the cenvat credit could be taken by the Appellant denying that financial year at that time, as they were availing full duty exemption under SSI exemption notification, during 2005-06, in terms of Board's circular No.345/2/2000-TRU dt.29.8.2000 they could take full cenvat credit that just because during 2004-2005, the Appellant, availing full duty exemption under Notification No.8/2003-CE, were exempt from taking central excise registration and for this reason, they had not taken central excise registration, the capital goods cenvat credit in respect of capital goods received during this period cannot be denied; and that in view of this, the impugned order denying the capital goods cenvat credit is not correct.

2.2 Shri S.N.Srivastava, the learned DR defended the impugned order reiterating the Commissioner(Appeals)'s findings in the impugned order and emphasized that –

(a) the Appellant are not eligible for Cenvat credit in respect of any capital goods received during the period when they had not obtained central excise registration, and

(b) in terms of Larger Bench's judgment in case of Spenta International Ltd. vs CCE, Thane reported in 2007(216)ELT.133(Tri.-LB), credit eligibility of capital goods is to be determined with reference to the dutiability of the final product on the date of receipt of capital goods, and since during the period when the capital goods had been received, the finished products manufactured by the Appellant were fully exempt from duty, they are not eligible for capital goods cenvat credit.

3. I have carefully considered the submissions from both the sides and perused the records. The capital goods, in this case, had been received during July'03 - June'04 period and were installed during Dec'03 - Aug'04 period. The production of excisable goods started from 1.8.04. Since the Appellant were availing SSI exemption under notification No.8/03-CE and during 2004-2005, the value of their clearances was within the full exemption limit of Rupees one crore, they, being exempt from registration, did not take central excise registration. The central excise registration was taken on 30.6.05. The point of dispute is as to whether the Appellant would be eligible for capital goods cenvat credit in respect of duty paid capital goods received during July'03 - June'04 period.

4. Cenvat credit has been denied only on the ground that for availing cenvat credit under Cenvant Credit Rules, a manufacturer is required to fulfil the statutory obligation of registration under the central excise law and in this case since the Appellant were not registered during the period prior to 10.9.04 and took registration only on 30.6.05, they could not have earned any cenvat credit under CCR,2002 in respect of the capital goods received during July'03 - June'04 period and, hence, there is no question of permitting any credit to them in terms of Rule 11(1) of CCR,04.

5. Since the period when the capital goods, in question, had been received, CCR,2002 were in force and since in terms of Rule 11(1) of CCR,2004, any amount of Cenvat credit earned by a manufacturer under CCR,2002, as they existed prior to 10.9.04 and remaining unutilized, shall be allowed to be utilized in accordance with these rules, the point to be decided is as to whether during the period prior to 10.9.04, the Appellant were eligible for Cenvat credit under CCR,2002 in respect of the capital goods received during July'03 - June'04 period.

5.1 In terms of Rule 3(1) of CCR,2002, a manufacturer or producer of final product was eligible for Cenvat credit of the specified duties paid on inputs or capital goods received in the factory on or after 1.3.02 for use in or in relation to manufacture of final products. The term "final product" is defined in Rule 2(e) of CCR,2002 as excisable goods manufactured or produced from inputs, except matches. Since there is no dispute that the goods manufactured by the Appellant are excisable goods, they have to be treated as "manufacture of final products". Since there is no dispute that the capital goods received were meant for use in or in relation to manufacture of final products, and since the duty whose cenvat credit is sought to be taken is one of the specified duties in Rule 3(1), the conditions for availing cenvat credit under Rule 3(1) are satisfied. There is no dispute that the conditions for taking capital goods cenvat credit in Rule 4 of CCR,2002 are also satisfied. Therefore, Cenvat credit was available in respect of the capital goods, in question, under CCR,02 and since no cenvat credit was taken at the time of receipt of capital goods during 2003-04 and 2004-05, in terms of Board's circular No.345/2/2000-TRU dt.29.8.2000 full cenvat credit could be taken in 2005-06. The provisions of Rule 6(4) prohibiting capital goods cenvat credit in respect of capital goods being exclusively used in the manufacture of exempted goods are not applicable to this case as this sub-rule is not applicable when the capital goods are used for manufacture of final products, exempt from whole of duty under any exemption based on the value or quantity of clearances made in a financial year and in this case, the capital goods were being used for manufacture of goods wholly exempt from duty under an exemption notification based on the value of the clearances during a financial year. Thus, the cenvat credit in respect of capital goods received during July'03 - June'04 period is admissible to the Appellant in terms of Rule 3(1), 4 & 6(4) of CCR,2002. The question arises as to whether the cenvat credit can be denied just because they had not taken central excise registration during the period prior to 10.9.04. Nowhere in CCR,02 or CCR,04 there is any provision that cenvat credit would not be available to a manufacturer of excisable goods who is not registered. In this case, the Appellant, though manufacturing excisable goods and liable to take registration in terms of Section 6 of Central Excise Act,1944 read with Rule 9(1) of Central Excise Rules,2002 were exempt from taking registration under a notification issued under Rule 9(2) for the reason that they were availing full duty exemption under SSI notification No.8/03-CE. A manufacture manufacturing excisable goods but exempt from registration formalities under Rule 9(1) for the reason that he is availing SSI exemption and the value of his clearances during the financial are within the full exemption limit, does not cease to be a manufacturer of excisable goods and therefore, capital goods cenvat credit in terms of the provisions of Rule 3(1) read with Rule 4 of CCR,2002 could not be denied to him for this reason.

6. In view of the above discussion, the impugned order is not correct. The same is set aside. The appeal is allowed with consequential relief.

(PRONOUNCED IN THE OPEN COURT ON 16/3/2010

(Rakesh Kumar)
Member(Technical)

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