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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1535/2005 - EX[DB]

Date 18/05/2010

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

To :
M/S NAHAR SPINNING MILLS LTD.
VILL SIMRAI MANDIDEEP DISTT RAISEN M.P
M/S NAHAR SPINNING MILLS LTD.

Appellant
Vs
Respondent

C.C.E.BHOPAL

I am directed to transmit herewith a certified copy of **Final order No.** 356/ **2010 EX[DB]** dated 14-5-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
C.C.E.BHOPAL
178,BHAGYA BHAWAN ZONE-II M.P.NAGAR BHOPAL M.P.
2. Adv./ Consult SH. Z. U. ALVI, ADV., D-8, B.D.A. COLONY, KOHIFIZA, BHOPAL
3 C.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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 Office Copy
14 Guard file
15. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

16. Tax India Online.Com (P) Ltd.
Unit No.1, 2nd Floor, Vasant Aracade, Nelson Mandela Road,
Vasant Kunj, New Delhi-70

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block 2, R.K.Puram,New Delhi-110066
Principal Bench, New Delhi.

E/1535/05

(Arising out of Order-in-Appeal No.615/CE/BPL/2004 dt.20.8.04 passed by Commissioner(Appeals), Bhopal)

For approval and signature:

Hon'ble Mr. Justice R.M.S.Khandeparkar, President
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. Nahar Spinning Mills Ltd. Appellants

Versus

CCE, Bhopal Respondent

Appearance
Sh. Z.U.Alvi, Adv. For Appellants

Shri Sunil Kumar, DR for Respondent

Coram: Hon'ble Mr. JUSTICE R.M.S.KHANDEPARKAR, PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of hearing: 25.3.2010
Date of Decision: 14/5/2010

FINAL Order No. 356/10-EX

Per Rakesh Kumar

The Appellants manufacture Cotton Yarn and Blended Yarn chargeable to Central Excise Duty under Chapter 52 and 55 of Central Excise Tariff Act. They also avail Cenvat credit of duty paid on input/capital goods used in or in relation to the manufacture of finished products. The Appellants, among other items, had taken Cenvat credit of duty paid on furnace oil and lubricant oil in terms of Rule 3 of Cenvat Credit Rules,2002. The lubricant oil after being used over a period of time is drained out. During the period of dispute, the same was sold as waste oil without payment of duty. The furnace oil is used for generation of electricity and the same before being pumped into generator, it passes through a separator where by a centrifugal operation, the impurities are separated. The impurities known as sludge are taken out and during the period of dispute, the same was sold being without payment of duty. The Department was of the view that the waste oil and sludge being chargeable to duty under sub-heading 2710.90 should have been cleared on payment of Central Excise Duty. It is on this basis that two show cause notices dt.27.1.03 for period from 2.2.02 to 31.10.02 and show cause notice dt.20.8.03 for the period from 1.11.02 to 31.3.03 were issued to the Appellant for recovery of duty amounting to Rs.75,241/- and Rs.17,678/- respectively alongwith interest and imposition of penalty on them under Rule 25(1) of Central Excise Rules,2002. The show cause cause notices were adjudicated by the Dy. Commissioner vide order-in-original No.46-

47/Adj./Vol.103/DC/Divn.II dt.30.1.04 by which demand of duty amounting to Rs.64,623/- in respect of oil sludge was dropped on the basis of the Board's circular No.84/2/86-CX dt.23.3.87 clarifying that oil sludge, not being a manufactured product, is not liable to duty, but duty demand of Rs.28,296/- in respect of clearance of waste oil was confirmed alongwith interest and penalty of Rs.15,000/- was imposed on the Appellant under Rule 25(1) of Central Excise Rules,2002 on the ground that since Cenvat credit of duty paid on lubricants had been availed, in respect of clearance of waste oil. Provision of Rule 3(4) of Cenvat Credit Rules,2002 would become applicable and an amount equal to the duty payable on the waste oil would be required to be paid, but the same was not paid. On appeal to Commissioner(Appeals), the Commissioner(Appeals) vide order-in-appeal No.615/CE/BPL/2004 dt.20.8.04 upheld the Dy. Commissioner's order observing that when input duty Cenvat credit has been taken in respect of lubricants, at the time of removal of the waste oil an amount equal to the duty chargeable on the same would be required to be paid as per the provisions of Rule 3(4) of Cenvat Credit Rules,2002. It is against this order of the Commissioner(Appeals) that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Z.U.Alvi, Advocate, learned Counsel for the Appellant, pleaded that the clearance of used and drained out lubricant oil in form of waste oil would not attract the provisions of Rule 3(4) of Cenvat Credit Rules,2002, as while Rule 3(4) of

Cenvat Credit Rules,2002 was applicable for the removal of cenvated inputs or capital goods "as such", the waste oil is not the same as lubricant oil and this cannot be said to be a removal of cenvated inputs as such, that in any case, the Tribunal in the cases of **Vikrant Tyres Ltd. vs CCE, Mysore** reported in 2004(171)ELT.23(Tri.-Bang.) and **Continental Petroleum vs Commissioner of Customs, Ahmedabad** reported in 2001(137)ELT.1437(Tri.-Del.) has held that waste oil generated by draining the lubricant oil after considerable period of use has not emerged as a result of any process of manufacture and hence would not be liable for any Central Excise Duty and that in view of this, impugned order is not correct.

2.2 Shri Sunil Kumar, learned DR, defending the impugned order, pleaded that the waste oil is nothing but the lubricant oil which had been drained out after being used for a period of time, that this is a case where the cenvated inputs had been removed as such, that in view of this, the provisions of Rule 3(4) of Cenvat Credit Rules,2002 would be attracted and an amount equal to duty chargeable on the goods would be payable and that in view of this, the demand has been rightly upheld by the Commissioner(Appeals).

3. We have carefully considered the submissions from both the sides and perused the records. The period of dispute in this case is from 2.2.02 to 31.3.03. During the period till 28.2.03 as per the provisions of sub-Rule 4 of Rule 3 of Cenvat Credit Rules,2002 when inputs or capital goods, on which Cenvat credit has been taken, are removed as such, from the factory, the

manufacturer of final products was required to pay an amount equal to the duty chargeable on such inputs at the rate of duty on the date of removal and on the value determined as per the provisions of Section 4 of Central Excise Act. W.e.f. 1.3.03 as per the provisions of amended sub-Rule 4 of Rule 3 of Cenvat Credit Rules,2002 in case of such removal of cenvated as such, the amount payable was an amount equal to the credit availed in respect of such inputs. However, during the period of dispute from the wordings of sub-rule 4 of Rule 3, it is clear that this provision becomes applicable only when the inputs, in respect of which Cenvat credit has been taken, are removed as such. Here the inputs in respect of which Cenvat credit has been taken was lubricant oil and the same after use over a period of time gets burnt up and when it is no longer usable, it is drained out and sold as waste oil. It is not the Department's contention that the waste oil can still be used as lubricant. Thus when the waste oil can not be called lubricating oil, this cannot be said to be a case where the Cenvated inputs had been removed as such and hence the provisions of sub-rule 4 of Rule 3 would not be applicable. Moreover, in any case the Tribunal in the case of Vikrant Tyres Ltd. vs CCE(supra) and also in case of Continental Petroleum vs CC, Ahmedabad(supra) has held that waste oil drained from an industrial system after original lubricating preparations have outlived their utility, is not a product coming into existence as a result of manufacturing activity and hence would not be liable to Central Excise Duty. Similar view had been taken by the Tribunal in the case of **CCE vs Ashok Leyland Ltd.** reported in 2003(151)ELT.438.

3.1 We also find that while the show cause notices had been issued on the basis that waste oil, which is used and burnt lubricant, drained out from the machines after use, is chargeable to duty under sub-heading 2710.90 of the tariff and in the show cause notices, Rule 3(4) of Cenvat Credit Rules,2002 had not been invoked, the adjudicating authority, while adjudicating these show cause notices has travelled beyond the SCNs and has confirmed the duty demand on waste oil by invoking Rule 3(4) of Cenvat Credit Rules, which is not permissible. However, as discussed above, the duty demand on waste oil is neither sustainable on the ground mentioned in the SCNs nor under Rule 3(4) of the Cenvat Credit Rules,2002.

4. In view of the above discussion, no amount was chargeable in respect of removal of waste oil. The impugned order is, therefore, not correct. The same is set aside and the appeal is allowed.

(Pronounced in the open Court on 14/5/2010)

(Justice R.M.S.Khandeparkar)
President

(Rakesh Kumar)
Member Technical

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