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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

Date 05/10/2010

Appeal No. E/1327/2005 – SM[BR]

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

To :
M/S BAGHPAT COOPERATIVE SUGAR MILL LTD.
BAGHPAT, U.P.

M/S BAGHPAT COOPERATIVE SUGAR MILL LTD. Appellant
Vs
C.C.E. MEERUT I Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 1101 / 2010-SM[BR] dated 31.8.2010 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. MEERUT I
   EXCISE CHOWK, UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT - 250005.
2. Adv. / Consult SHRI VIKRANT KAKRIA ADV.
   H.NO.509, SECTOR-7 , PANCHKLA [HR]
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. 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. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 1327 of 2005-SM(BR)

[Arising out of Order-in-Appeal No. 620-CE/APPL/MRT-I/2004 dated 31.12.2004 passed by the Commissioner of Customs & Central Excise (Appeals), Meerut I.]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

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M/s. Baghpat Cooperative Sugar Mills Ltd. — Appellants

Vs.

Commissioner of Central Excise
Meerut — Respondent

Appearance: Shri Vikrant Kakria, Advocate for the Appellants
Shri R.K. Gupta, SDR for the Respondent

Date of Hearing/decision : 31.08.2010

Final **ORAL ORDER NO. 1101/2010 SM(BR)**

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 620-CE/APPL/MRT-I/2004 dated 31.12.2004.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellants filed declaration dated 10.4.95 under Rule 57G for the purpose of availing Cenvat Credit. After awaiting for permission of the Assistant Commissioner to give credit in terms of transitional provision, in December, 1996 they took credit of Rs.15,792/- + Rs.2,14,769/- in respect of inputs lying in stock as on 16.3.95 and 10.4.95. They also took credit of inputs received by them during the period from 15.4.95 to May, 1996 in December, 1996. The credit taken by the appellants stands denied on the ground that in all these cases the appellants have taken the credit after expiry of six months from the date of receipt of documents based on which they have taken the credit. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants assailed the order of the Commissioner (Appeals) on the following grounds:-

a) The credit of Rs. 15,792/- and Rs. 2,14,769/- have been claimed under amended transitional provisions of Rule 57H with effect from 16.3.95. As per the conditions for availing the credit, they have filed the declaration under 57H before 15.4.95.

b) As regards 230588 gunny bags, he submits that the transitional provisions covers not only the goods lying in stock as on 16.3.95 but also in respect of goods received on or after the said date, and therefore, no time limit was to be made applicable and the credit taken in December, 1996 is in order. Alternatively, he submits that since the stipulation of taking credit within 6 months was not prescribed prior to amendment dated 29.6.95 to Rule 57G, at least for the period 15.4.95 to 28.6.95 the credit should be made available irrespective of when the credit was taken as the six months limit cannot be applied to documents on which credit was taken during the said period. In this regard, he relies on the decision of the Hon'ble High Court of Punjab and Haryana in the case of Industrial Cables vs. CCE, Chandigarh reported in [2009 (236) ELT 658 (P &H)] wherein it has been held that amendment in Rule 57G introduced on 29.6.1995 cannot be applied to earlier period.

5. Learned SDR referring to the documents submitted by the learned Advocate submits that the declaration dated 10.4.95. according to the appellants own admission might have been received in the office of jurisdictional Central Excise officer on 12.4.95 and therefore, the declaration has not been filed within the specified time limit. The declaration of stock dated 28.7.95 partly related to inputs lying on 16.3.95 involving credit of Rs. 15,792/- and the rest relate to the stock lying as on 10.4.95 involving the credit of Rs. 2,14,768/- This declaration have been filed beyond the time limit specified and therefore they are not eligible for benefit. He also relies on the decision of the Hon'ble High Court of Gujarat in the case of Yeast Alco Enzymes Ltd. vs. Union of India reported in [2006 (194) ELT

269 (Guj)] wherein it has been held that time limit prescribed under Rule 57G of the Rules is not ultra virus of the Act.

6. I have carefully considered the submissions from both sides. The transitional provision under Rule 57H as amended on 16.3.95 envisages credit being allowed on the inputs which are lying in stock or are received in the factory on or after 16.3.95 and the same is subjected to condition that " provided that credit under this sub-rule shall be allowed in respect of inputs received or declaration made under Rule 57G on or after 15th day of April, 2005." The credit in terms of transitional provisions are thus available subject to filing of declaration under Rule 57G on or before 15.4.95. There is no dispute that appellants have filed necessary declaration under Rule 57 G or before 15.4.95. Whether the stock position of inputs lying as on 16.3.95 was filed on 10.4.95 on or 12.4.95 is therefore relevant. The transitional provisions also envisages that "the Assistant Commissioner of Central Excise may allow credit of duty paid on inputs ......" Therefore the appellants waiting for approval by the jurisdictional Assistant Commissioner cannot be faulted. Since the conditions have been fulfilled, the denial of credit amounting to Rs. 15,792/- and Rs.2,14,769/- in respect of inputs lying in stock on or before 10.4.95 cannot be upheld.

7. The purpose of transitional provisions has to be viewed in proper prospective. The Rule 57 G has allowed credit with effect from 29.6.95 prescribing restriction that the manufacturer shall take credit within six months period. For any manufacturer taking credit, they had to fulfil the condition of the time limit in respect of inputs covered by documents

received from the date 29.6.95 onwards. At the same time, the decision relied upon by the Hon'ble High Court of Punjab and Haryana in the case of Industrial Cables clearly ruled that Rule 57 G which was introduced on 29.6.95 cannot be allowed to operate for earlier period. Therefore, the appellants shall be eligible for credit on the basis of documents relating to the period 15.4.95 to 28.6.95 without reference to limit of 6 months period for taking credit. However, this amount has not been separately quantified. For the period from 29.6.95, the appellants would be entitled to credit only if they had taken the credit within 6 months. Since in respect of demand relating to this period, admittedly, the appellants have taken the credit after expiry of six months, the denial is justified and same is upheld. In the light of the above, the appeal is disposed of as follows:

a) The denial of credit of Rs. 15,792/- + Rs. 2,14, 769/- is set aside and appellants are eligible to take the credit.

b) As regards the denial of credit amounting to Rs. 5,57,818/- is concerned, the denial of credit relating to the documents relating to 15.4.95 to 28.6.95 is set aside and the denial of credit for the subsequent period is upheld.

8. The appeal is disposed of as above.

(M. Veeraiyan)
Member(Technical)

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