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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/4544/2004 - EX[DB] Date 15/01/2010

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

To :
M/S GMP FINISHING MILLS
NEAR RAILWAY CROSSING NO. 22, AMRITSAR(PB)

M/S GMP FINISHING MILLS Appellant
Vs
C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No. 15/2010 EX[DB]** dated 01-12-09 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. CHANDIGARH
   PLOT NO 19, SEC 17-C, CHANDIGARH
2. Adv. / Consult SH. BIPIN GARG, ADV,
   B-1/1289-A, VASANT KUNJ,
   N. DELHI-70
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 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
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

Excise Appeal No. 4544 of 2004

[Arising out of the Order-in-Appeal No. 297-CE/APP/Jal/2004 dated 30/06/2004 passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

For Approval and signature :

Hon'ble Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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 GMP Finishing Mills — Appellant

Versus

CCE, Chandigarh — Respondent

Appearance

S/Shri Bipin Garg, Advocate and Atul Gupta, C.S. – for the appellant.

Shri R.K. Verma, Authorized Representative (JDR) – for the Respondent.

CORAM : **Hon'ble Justice R.M.S. Khandeparkar, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 01/12/2009.
DATE OF DECISION : 01/12/2009.

Final Order No. 15/2010-Ex Dated : ____________

Per. Rakesh Kumar :-

The appellant manufacture processed knitted fabrics chargeable to Central Excise duty Chapter 60 of the Central Excise Tariff. The point of dispute is as to whether during the period from May 1998 to October 1998, they were eligible for deemed credit under Notification No. 29/96-CE (NT) dated 3/9/96, issued under sub-rule (2) of Rule 57A of the Central Excise Rules, 1944. The Deputy Commissioner vide order-in-original No. 50/DC/2000 dated 30/5/2000 denied the credit amounting to Rs. 20,85,801/-; confirmed its demand alongwith interest under Rule 57I (1) (iii) readwith Rule 57I (5) of the Central Excise Rules, 1944 and also imposed penalty of Rs. 10,000/- on the Appellant under Rule 173Q (1) (bb) ibid on the ground that the deemed credit was availed without filing the required declaration under Rule 57G. The Commissioner (Appeals) vide order-in-appeal No. 392/CE/CHD-II/01 dated 30/10/01 upheld the Deputy Commissioner's order. Against this order, the Appellant filed an appeal before the Tribunal and the Tribunal vide order-in-appeal No. A/927/02-NB (D) dated 29/8/02 remanded the matter to CCE (Appeals) for de-novo decision after examining the documents. However, in de-novo proceedings also, the CCE (Appeals) vide order-in-appeal No.

297/CE/APP/JAL/04 dated 30/6/04 again dismissed the appeal and upheld the Deputy Commissioner's order. It is against this order that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Bipin Garg, Advocate, and Shri Atul Gupta, Company Secretary, the learned Counsels for the Appellant, pleaded that the only ground on which the deemed credit has been denied is that the required declaration had not been filed, that this is factually incorrect as the declaration had been filed on 13/9/96, that copy of the declaration available with the Appellant shows that the same was received in the Deputy/Assistant Commissioner's office on 13/9/96, that the certified copy of the receipt register of the Deputy Commissioner's office, obtained under RTI Act, 2005 shows receipt of the Modvat declaration from the Appellant on 17/9/96, that the Deputy Commissioner cum CPIO vide letter dated 20/7/09 in respect of Appellant's application under RTI Act, 2005, has forwarded Range office's copy of their declaration, containing confirmation from the then Range Superintendent regarding the receipt of the deemed Modvat declaration on 13/9/96 and that a larger bench judgment of the Tribunal in case of **Kamakhya Steels (P) Ltd. vs. CCE, Meerut** reported in **2000 (121) E.L.T. - 247 (Tri. - LB)**, referring to the Board's Circular No. 441/7/99 dated 23/2/99 has held that even for the period prior to the amendment of Rule 57G by Notification No. 7/99-CE (NT) dated 9/2/99, Modvat credit cannot be denied on the ground that the declaration filed under sub-rule (1) of Rule 57G does not contain all the details required to be contained therein or the manufacture fails to comply with any other requirement under sub-rule (1)

2.2 Shri R.K. Verma, the learned Departmental Representative defended the impugned order reiterating the findings of the CCE (Appeals) in the impugned order.

3. We have carefully considered the submissions from both the sides and perused the records. The only ground on which the deemed credit has been denied is that the required declaration under Rule 57G was not submitted. However according to the Appellant, they had submitted this declaration on 13/9/96 and in this regard they have produced –

(i) a copy of declaration bearing acknowledgement dated 13/9/96 regarding its receipt,

(ii) attested photocopy of the receipt register of the Divisional office showing receipt of a Modvat declaration of the Appellant (GMPF) against entry No. 4298 on 17/9/96, and

(iii) A letter dated 20/7/09 of the Deputy Commissioner enclosing, in response to the Appellant's application under RTI Act, 2005, the Range's copy of the declaration, bearing confirmation from the then Range Superintendent regarding its receipt.

3.1 The lower appellant authority by the impugned order has upheld the order-in-original on the grounds that -

(i) the appellant, in spite of grant of opportunity, have not produced the original declaration, bearing the signatures of the receiving official ;

(ii) the copy of the receipt register produced by the Appellant shows receipt of a Modvat declaration dated 17/9/96 while the Appellant's declaration was filed on 13/9/96, and

(iii) the Tribunal's judgment in case of M/s Kamakhaiya Steels (Supra) is not applicable to this case as the records of the Appellant are not straight and they have made misrepresentation before the Tribunal.

4. The Department does not dispute the fact that in the Receipt register of the Divisional office, a 'Modvat declaration' filed by "GMPT" has been entered against Sl. No. 4298 dated 17/9/96. Just because it was entered in the receipt register of the Divisional office on 17/9/96, it cannot be said that it is not the Modvat declaration filed by the Appellant on 13/9/96. As mentioned above, at the time of hearing, the Appellant produced a letter dated 20/7/09 of the Deputy Commissioner, Central Excise, Amritsar, in response to an application under RTI Act, 2005 filed by the Appellant, under which the Deputy Commissioner has forwarded a copy of the Appellant's declaration dated 13/9/96 endorsed to the Range Office, which bears the Range Officer's initials and on which the then Range Officer Shri S.S. Azad (now retired) has given a confirmation that this letter had been received in the Range Office on 13/9/96 and had been

marked by him. The Deputy Commissioner, in his letter dated 20/7/09 does not dispute the remark of Shri S.S. Azad's, then Range Office, Chheharta – III Range regarding the receipt of the Modvat declaration in the Range Office on 13/9/96. The Deputy Commissioner's letter dated 26/7/09 forwarding Range Office's copy of the declaration bearing the then Range officer's confirmation regarding its receipt, coupled with the entry of a "Modvat declaration" from "GMTF" (the Appellant) in the Divisional Officer's receipt register on 17/9/96, shows that the Modvat declaration filed by the Appellant had been received in the Divisional as well as in Range Office on 13/9/96. In view of this, the impugned order upholding the denial of deemed Modvat credit is not sustainable and the same is set aside. The appeal is allowed.

(Operational portion of the order pronounced in open court)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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