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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/1590/2005 - EX[DB] Date 03/11/2010

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

To :
M/S BHERWA TEXTILES INDUSTRIES
4 TO 7, INDUSTRIAL AREA, PALI-MARWAR,
RAJASTHAN

M/S BHERWA TEXTILES INDUSTRIES Appellant
Vs
C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 771-777/ 2010 EX[DB] dated 05-10-10 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. JAIPUR II
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
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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 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
16. HON'BLE PRESIDENT
17. M/S. MAHAVEER TEXTILES INDS,
E-88, INDL. AREA, PALI MARWAR (RJS.)
18. M/S. RIDHI SIDHI MILLS (INDIA) PVT. LTD.,
E-64, INDL. AREA, JODHPUR (RAJ)
19. M/S. SHAH D.M. TEXTILES (P) LTD.,
G/A-104 TO 106, MANDIA ROAD, PALI MARWAR (RAJ.)

Assistant Registrar
(Excise Appeal Branch)

P.T.O. -2

20. M/S. PARAS TEXTILES INDS.,
32/34, INDL. AREA, JODHPUR (RAJ.)

21. M/S. VINOD INDUSTRIES,
F-220-221, MANDIA ROAD,
PALI, MARWAR (RAJ.)

22. M/S. NAHATA FABRICS LTD.,
E-1 & 2, INDL. AREA, PALI-MARWAR (RAJ.)

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

DATE OF HEARING : 05/10/2010.
DATE OF DECISION : 05/10/2010.

Excise Appeal No. 1590 of 2005

M/s Bherwa Textiles Industries — Appellants

Versus

CCE, Jaipur – II — Respondent

Excise Appeal No. 1780 of 2005

M/s Mahaveer Textiles Industries — Appellants

Versus

CCE, Jaipur – II — Respondent

Excise Appeal No. 1970 of 2005

M/s Ridhi Sidhi Mills (India) Pvt. Limited — Appellants

Versus

CCE, Jaipur – II — Respondent

Excise Appeal No. 2047 of 2005

M/s Shah D.M. Textiles (P) Limited — Appellants

Versus

CCE, Jaipur – II — Respondent

Excise Appeal No. 2048 of 2005

M/s Paras Textiles Industries — Appellants

Versus

CCE, Jaipur – II — Respondent

Excise Appeal No. 2094 of 2005

M/s Vinod Industries Appellants

Versus

CCE, Jaipur – II Respondent

Excise Appeal No. 2097 of 2005

M/s Nahata Fabrics Limited Appellants

Versus

CCE, Jaipur – II Respondent

[Arising out of the Order-in-Appeal No. 187-193 (RM) CE/JPR-II/ 2005 dated 08/04/2005 passed by The Commissioner of Central Excise (Appeals), Jaipur.]

For Approval and signature :

Hon'ble Shri 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?	: Yes
2.	Whether it would 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 Department Authorities?	: Yes

Appearance

Shri Saurabh Yadav, Advocate - for the Appellants.

Shri S.N. Singh, Authorised Representative (Jt. CDR) – for the Respondent.

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

Final Order No. 771-777/10-EX Dated : ____________

Per. Shri Justice R.M.S. Khandeparkar :-

Since common questions of law and facts arise in all these appeals and also that they arise from common impugned order passed by the Commissioner (Appeals), Jaipur on 8th April 2005, these appeals were heard together and are being disposed of by this common order.

2. In all these appeals only question which arises for consideration is whether the goods lying with the transporter which were yet to be received in the factory can be considered as goods lying in stock within the meaning of the said expression under Rule 9A of the Cenvat Credit Rules.

3. The facts are not in dispute. It is not in dispute that the goods in question were lying with the transporter and were yet to be received in the factory. The appellants relying upon the Circular No. B3/3/2003-TRU dated 28th March 2003 issued by the Board contended that in view of declarations filed by the appellants in relation to such goods, the authorities below erred in not considering such goods to be in stock with the appellants on the relevant date. Once the appellants for all purposes had acquired right to the goods, the same, merely on the ground of non-receipt of those goods in the factory, could not have been

excluded from being in stock with the appellants within the meaning of the said expression under the said provision of law.

4. The departmental representative on the other hand has drawn our attention to the decision of the Tribunal in the matter of **Noorani Tex Prints Ltd. vs. CCE, Jaipur – II** reported in **2008 (221) E.L.T. 225 (Tri. – Del.)** while contending that the goods having not been received in the factory premises, the same were not ripe to be called as the goods in stock with the appellants within the meaning of the said expression under the said provision of law.

5. The Rule 9A of Cenvat Credit Rules, 2002 reads thus :-

> "(2) Notwithstanding anything contained in sub-rule (1), the manufacturer, producer, first stage dealer or second stage dealer, as the case may be, referred to in the said sub-rule, who is unable to produce the document evidencing actual payment of duty, shall be entitled to avail credit, calculated in a manner referred to in sub-rule (3), on inputs falling under Chapters 50 to 63 of the First Schedule to the Tariff Act, ***lying in stock or in process or contained in finished products lying in stock as 31st day of March, 2003*** upon making a written declaration of the description, quantity and value of the stock of each of such goods. The declaration made under this sub-rule shall exclude quantity of stock declared under sub-rule (1) (3) (a). The credit of duty on each such input ***lying in stock*** and in process shall be calculated on the basis of such rate as may be notified by the Central Government in this behalf, having regard to the average price of such inputs,

and the applicable rate of duty and quantity of inputs as declared by the assessee under sub-rule (2).

(b) The credit of duty on inputs contained in the fabrics ***lying in stock as on 31st day of March, 2003*** shall be calculated in the following manner, namely :-

(i) Where the inputs and the finished products are covered under Notification No. 52/2001-Central Excise (NT) dated 29th June, 2001, subject to such conditions as prescribed under the said notification, the credit shall be equal to the such rate of credit as may be notified by the Central Government in this behalf, multiplied by the quantity of such finished product as declared by the assessee; or

(ii) Where the inputs and the finished products are covered under notification Nos. 54/2001-Central Excise (NT) dated the 29th June, 2001, or 6/2002-Central Excise (NT) dated the 1st March 2002, subject to such conditions as prescribed under the said notification, the credit shall be equal to the product of –

(A) The applicable percentage credits in terms of the said notification ;

(B) The value of such finished product declared by the assessee ; and

(C) The duty rate applicable to such final product in terms of Notification No. 7/2003-CE dated 28.2.2003."

6. The relevant date was subsequently changed to 1st April 2003 instead of 31st March 2003. There is no dispute that the appellants did file the necessary declaration. However, the declarations undisputedly disclosed that the goods at the relevant

time were with the transporter and were not received in the factory premises. The Rule 3 of the Cenvat Credit Rules, 2002 clearly provided that a manufacturer or producer of final products were entitled to take credit of the duty of excise paid as enumerated under the said rules in relation to any inputs or capital goods received in the factory. Similar is the provision under Rule 3 of the Cenvat Credit Rules, 2004.

7. The expression capital goods was defined under Rule 2 (b) of the Cenvat Credit Rules, 2002 as those goods which was specified under the said definition clause used and used in the factory in the manufacturer. The expression inputs was defined under Rule 2 (g) to mean those goods which was specified in the said definition of clause but used for manufacture of final products or any other purpose within the factory of production. In other words, the provisions of law clearly required the goods to be capital goods or inputs to have them brought within the factory premises. Unless the articles enter the factory premises they cannot be called as capital goods or inputs and in terms of Rule 3 either of Cenvat Credit Rules, 2002 or Cenvat Credit Rules 2004 duty paid on any such article cannot generate the credit under the said provisions of law. Obviously, therefore, in order to avail the benefit of Rule 9A, the articles must be the inputs or goods within the meaning of those expressions under the said provision of law. Hence, unless the inputs or goods were in the factory premises, it could not have been said to be within the

stock for the purpose of availing benefit under Rule 9A of the said rules.

8. The Commissioner (Appeals) in the impugned order in that regard has held thus :-

> "Goods that have not been received cannot, by any stretch of imagination, be considered to be stock. The Board's intention in issuing the clarification is that credit should not be denied on "stock" which is not available in the factory due to any reason such as transfer to job work, outside storage, etc. Moreover, in terms of the provisions, the premises where the goods were lying were required to be declared. The appellants have in fact admitted that they had not fulfilled this requirement of the provisions. In any case, no concrete evidence has been brought on record to suggest that the goods were actually part of their "stock" on the relevant date."

9. In fact above observation does not require any further elaboration and it is a complete answer to the points sought to be canvassed on behalf of the appellants.

10. The Circular sought to be relied upon by the appellants reads thus :-

> "Please refer to Rule 9A of Cenvat Credit Rules issued vide Notification No. 25/2003-CE (N.T.) dated 25/3/2003, regarding transitional provisions pertaining to Textiles and Textile Articles and declaration of stock as on 31/3/2003. Trade may be informed suitably that in case the declared

stock as on 31/3/2003, is kept in a place other than the registered/to be registered premise, the address of the said premise or premises where such stock is kept, must be declared by the assessee in the stock declaration".

11. Plain reading of the above Circular nowhere discloses that it would include the goods lying with the transporter. Question of goods coming in possession of transporter arises when goods are in transit. Very fact that the goods are to be in transit, it will disclose that they were not in stock in the factory premises of the assessee.

12. It is, however, sought to be contended that referring to the Board Circular, it would be clear that even those goods which are stored at the place other than the registered place would also include to be goods in stock. Undoubtedly the said concession appears to have been given under the said Circular. However, the Circular will have to be read alongwith the statutory provisions. Having so read it would only mean that in case of insufficiency of place at the registered premises to store the goods, after temporary arrangements to be made to store the goods at some other place disclosed to the department, the goods stored at such place could have been considered as the goods in stock. However, for that purpose, it was necessary for the assessee to show that the goods had actually entered the factory premises before such store. Admittedly the appellants were not able to establish the same. Being so, the appellants cannot taking shelter of the said Circular can contain that the goods which the

appellants were yet to receive in the factory premises were also to be considered as the goods in stock.

13. The Tribunal in Noorani Tex Prints Ltd. case had held thus:-

"**8.** The contention of revenue is that in the declaration, the appellant declared the stock of grey fabrics lying in a godown at Nayagaon, and in some cases the address is given as in a godown or with the transporter. Therefore, in this situation, the appellant had not complied with the condition of deemed credit order. The contention is that it has been clarified by the Board that in case the stock of grey fabrics is kept in a place other than any registered/to be registered premises, the address of the said premise or premises where such stock is kept, must be declared in the stock register. As the appellants had simply mentioned at a godown at Nayagaon or with the transporter, without giving any particulars regarding the address or the name of the transporter, the appellants are not entitled for credit. The revenue relied upon the decision of the Hon'ble Supreme Court in the case *of Eagle Flask Industries Ltd.* v. *CCE, Pune* reported in 2004 (171) E.L.T. 296 (S.C.) where the Hon'ble Supreme Court held that if the assessee wants to avail the benefit of notification, the conditions imposed in the notification are to be strictly complied with for availing the benefit. The contention of revenue is that manufacturer has not filed any declaration for availing the benefit of notification and Hon'ble Supreme Court has held that for filing a declaration is not an empty formality or procedural requirement.

9. In this case, the appellant filed a declaration for availing deemed credit in pursuance to the deemed credit order under Notification No. 25/2003. As per the condition of notification, the assessee is to declare the goods lying in stock or lying in stock as on 31-3-2003 by filing a written declaration. Subsequently, the notification was amended whereby stock position as on 1-4-2003 is to be disclosed in the declaration. The Board also issued a circular dated 28-3-2003 clarifying that in case the goods are kept in a place other than the registered/to be registered premises, the address of the said premises or where such goods are kept, must be declared by the assessee in the stock declaration.

10. I have gone through the stock declaration register. The appellant has declared the stock in a godown in Nayagaon or with the transporter. No address of the godown or address of the transporter is given. In these circumstances, I find no infirmity in the impugned order and the demand is upheld."

14. It cannot be disputed that whenever an assessee wants to avail any benefit of any beneficial provision either in the form of statutory provision or any subordinate legislation, including notification, if the conditions are imposed for availing such benefit, then those conditions are to be strictly complied with by the assessee. Law in that regard is well settled by the decision of Apex Court in Eagle Flask Industries Ltd. case. Admittedly the case in hand, the appellants were not able to disclose exact address of storage of the goods as they were in possession of the transporter. In other words, the goods were in fact in transit. Being so, no fault can be found with the impugned order passed by the lower authorities.

15. As regards the issue relating to penalty, it was sought to be contended that the declarations were filed as to how the goods were sought to be procured by the appellants. There was no intention to avail the credit illegally.

16. Once we find that the appellants admitted that the goods were yet to be received were claimed to be in stock with the appellants with the sole intention to avail the credit arising out of the duty paid on such goods, it would obviously disclose that the appellants were attempting to avail credit unlawfully. The contentions that the appellants either had misunderstood the provisions of law or were confused in the matter cannot be accepted. The provisions of law in relation to the matter in issue were very clear and there was no scope for any misunderstanding in that regard. Being so, we do not find any justification for interference in the matter of imposition of penalty.

17. The appeals are therefore dismissed.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK