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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/1658/2005 - EX[DB] Date 03/11/2010

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

To :
M/S SURYAVANSHI SPINNING MILLS LTD
RAJNA TAHSIL PANDHURNA DISTT-CHHINDWARA
M.P.
M/S SURYAVANSHI SPINNING MILLS LTD Appellant
Vs
C.C.E BHOPAL Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 768/ **2010 EX[DB]** dated 07-07-10 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
   HOSHANGABAD ROAD, 48, ADMINISTRATIVE AREA, AREA HILLS, BHOPAL (M.P.) 462011
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

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.

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
Division Bench

Excise Appeal No.1658 of 2005
(Arising out of Order-in-Origianal No.02/COMMR/CE/2005 dated 9.3.2005 passed by the Commissioner of Central Excise, Bhopal)

Date of Hearing: 07.07.2010
Date of Decision:07.07.2010

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 should 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 Departmental authorities?	

M/s.Suryavanshi Spinning Mills Ltd. — Appellant
Vs.
CCE, Bhopal — Respondent

Present for the Appellant : Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri Virender Chaudhary, DR

Coram: Hon'ble Mr. Justice R.M.S.Khandeparkar, President
Hon'ble Mr.Rakesh Kumar, Member (Technical)

~~**ORAL**~~ FINAL **ORDER No.** 268/10-EX

PER: RAKESH KUMAR

The facts leading to this appeal are, in brief, as under:

1.1 The appellant are manufacturer of cotton yarn and synthetic yarn of various counts chargeable to Central Excise duty under sub heading 5205.11 and 5509.90 respectively of the Central Excise

Tariff. They also availed cenvat credit of duty paid on inputs and capital goods used in or in relation to the manufacture of the finished products under Cenvat Credit Rules, 2002. The appellants' unit was registered as 100% EOU and had undergone de-bonding on the basis of the Assistant Development Commissioner, Noida Export Processing Zone, Noida's Final De-bonding Order dated 05.12.2002. On the basis of De-bonding order, at the time of de-bonding, the appellant paid duty amounting to Rs.91,68,904/- on the capital goods, finished goods, semi finished goods and raw material lying in the factory on the date of de-bonding. After de-bonding the appellant's unit started functioning as a DTA unit.

1.2 On scrutiny of the ER-1 return for the month December, 2002, it was noticed that the appellant had taken cenvat credit amounting to Rs.51,06,865/- on the cotton yarn and synthetic yarn considering the same as inputs on the strength of their own invoice No.321 dated 26.11.2002, under which at the time of de-bonding, they had paid duty on finished goods, semi finished goods, raw material etc. lying in the factory on the date of de-bonding. Since it appeared that the appellant were not eligible for cenvat credit amounting to Rs.51,06,865/- in respect of cotton yarn and synthetic yarn, as the same are finished goods and not inputs meant for use for manufacture in finished goods. A SCN dated 18.12.2003 was issued to the appellant for demand of wrong cenvat credit alongwith interest and imposition of penalty on them under Rule 13 of Cenvat Credit Rules. The SCN was adjudicated by the Commissioner vide Order-in-Original dated 9.3.2005 by which the cenvat credit demand of Rs.51,06,865/- was confirmed alongwith interest and besides this, penalty of Rs.2 lakhs was also imposed on the appellant under Rule 13 of Cenvat Credit Rules, 2002. It is against this order of the Commissioner that the present appeal has been filed.

2. Heard both sides.

3. Shri B.L.Narsimhan, Advocate, learned Counsel representing the appellants, while conceding that the appellants were not eligible for the cenvat credit of Rs.51,06,865/- of the duty paid on the cotton yarn and synthetic yarn at the time of de-bonding, pleaded that since on the same day i.e. on 26.01.2002, the entire stock of cotton yarn and synthetic yarn has been cleared on payment of duty amounting to Rs.65,73,153/-, the entire cenvat credit amounting to Rs.51,06,865/- in respect of cotton yarn and synthetic yarn stood reversed and hence there was no question of interest on the cenvat credit under dispute, as the entire cevnat credit had been reversed on the same day on which day it had been taken. He also pleaded that since this cenvat credit was taken due to misunderstanding and that availment of cenvat credit had been declared in the ER-1 return as well as in the Cenvat credit return, there is no case for imposition of penalty.

4. Shri Virender Chaudhary, learned DR defending the impugned order reiterated the findings of the Commissioner.

5. We have carefully considered the submissions from both sides and perused the records.

6. The appellants are manufacturers of cotton yarn and synthetic yarn and earlier they were 100% EOU and had de-bonded on

26.11.2002 in pursuance to the order of the Assistant Development Commissioner at the time of de-bonding, they had paid duty of Rs.91,68,904/- and there is no dispute this duty included the duty of Rs.51,06,865/- on the stock of cotton yarn and synthetic yarn lying in their factory at that time. However, after becoming a DTA unit, they took cenvat credit amounting to Rs.51,06,865/- of the duty paid on the yarn lying in their stock at the time of de-bonding, which is incorrect as the yarn was not going to be used by them as input in or in relation to the manufacture of finished products. The appellants, therefore were not eligible for cenvat credit. However, we find that the entire stock of the cotton yarn and synthetic yarn was cleared on the same day i.e. 26.11.2002 on payment of duty amounting to Rs.65,73,153/- and thus the entire amount of cenvat credit stood reversed on the day on which the same has been taken. In view of this, while cenvat credit demand has been rightly confirmed by the Commissioner, there would be no occasion to charge interest as cenvat credit has been stood reversed on the same day on which the same has been taken.

7. As regards the penalty, looking to the fact that the cenvat credit was reversed on the same day on which it had been taken and its availment was declared in the ER-1 return as well as in the Cenvat Credit return filed under Rule 7(5) of Cenvat Credit Rules, 2002 there is no justification for imposition of penalty of Rs.2 lakhs and the same is liable to be set aside.

8. In view of the above discussion while the Commissioner's order of demand of cenvat credit is upheld, the order relating to the

interest and penalty is set aside. The appeal stands disposed of as above.

(The operative portion of the order was already pronounced in the open court on 07.07.2010)

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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