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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

Date **24/01/2011**

Appeal No. E/1253/2005 - EX[DB]

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

To :
C.C.E. JAIPUR I
N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME,
JAIPUR 302005.

C.C.E. JAIPUR I Appellant

Vs

M/S RAJASTHAN TEXTILE MILLS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 94/**2011 EX[DB]** dated 21-1-11

passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S RAJASTHAN TEXTILE MILLS
BHAWNIMADI, KOTA

2. Adv. / Consult SH. S. YADAV., ADV.,
A-5, BASEMENT,
LAJPAT NAGAR-III,
N. DELHI-24
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No 2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. 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. 1253 of 2005

[Arising out of the Order-in-Appeal No. 433 (MPM) CE/JPR-I/ 2004 dated 17/01/2005 passed by The Commissioner (Appeals), Customs and Central Excise, 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?	:
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?	:

CCE, Jaipur – I — Appellant

Versus

M/s Rajasthan Textile Mills — Respondent

<u>Appearance</u>

Shri Sunil Kumar, Authorized Representative (DR) – for the appellant.

Shri S. Yadav, Advocate – for the Respondent.

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

DATE OF HEARING : 09/12/2010.
DATE OF DECISION : 21/1/11.

Final Order No. 94/2011-EX Dated : ____________

Per. Rakesh Kumar :-

The respondent are manufacturers of Cotton Yarn and Blended Synthetic Staple Fibre Yarn chargeable to Central Excise Duty under Chapter 52 and 55 respectively of the Central Excise Tariff. They also availed Cenvat credit of duty on inputs and capital goods used in or in relation to the manufacture of the finished product. One of the inputs used by them is furnace oil which was used for generating electricity, which, in turn, was used for manufacture of dutiable as well as fully exempted finished products. The Department was of the view that in terms of Erstwhile Rule 57C readwith Rule 57CC of Central Excise Rules, 1944 and subsequently in terms of Rule 6 (1) readwith Rule 6 (2) of Central Excise Rules, 2001, the respondent were not entitled for Cenvat credit of duty paid on the fuel, which was used for generating electricity, which, in turn, was used in or in relation to the manufacture of the exempted final products. It is on this basis that a show cause notice was issued to the respondent for –

(a) recovery of Modvat/Cenvat credit of Rs. 8,49,895/- under Rule 57I (i) (ii) of Erstwhile Central Excise Rules, 1944/Rule 12 of Cenvat Credit Rules, 2001 readwith proviso to Section 11A (1) of Central Excise Act, 1944, alongwith interest on this credit at the applicable rate under Rule 57I (5) of Central Excise Rules 1944/Rule 12 of Cenvat Credit Rules, 2001 readwith Section 11AB of Central Excise Act, 1944 ; and

(b) imposition of penalty on the respondent under Rule 57I (4) of Erstwhile Central Excise Rules 1944/Rule 13 of Cenvat Credit Rules, 2001 readwith Section 11AC of Central Excise Rules, 1944 as well as Rule 173Q of Central Excise Rules, 1944.

1.2 The show cause notice was adjudicated by the Joint Commissioner, Central Excise, Jaipur - I vide order-in-original dated 17/09/04 by which the Modvat/Cenvat credit demand of Rs. 8,49,895/- was confirmed alongwith interest and beside this, penalty of equal amount was also imposed on the respondent. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide order-in-appeal No. 433 (MPM) CE/JPR-I/2004 dated 20/12/2004 set aside the Joint Commissioner's order and allowed the appeal following the judgment of the Tribunal in the case of **CCE, Tirunelveli vs. Sudarsanam Spinning Mills** reported in **2004 (166) E.L.T. 461 (Tri. – Chennai),** wherein it was held that when furnace oil and LSHS was used as fuel for generation of electricity, which was used in manufacture of dutiable as well as fully exempt finished products, the assessee is not required to reverse any credit of the duty paid on the quantity of furnace oil/LSHS used in the manufacture of electricity which, in turn, was used in or in relation to the manufacture of fully exempt finished products. It is against this order of the Commissioner (Appeals) that the Department has come in appeal before the Tribunal.

2. Heard both the sides.

2.1 Shri Sunil Kumar, the learned Departmental Representative pleaded that the issue involved in this case is squarely covered in favour of the Department by the judgment of Hon'ble Supreme Court in the case of **Commissioner of Central Excise vs. Gujarat Narmada Fertilizers Co. Ltd.** reported in **2009 (240) E.L.T. 661 (S.C.)**, wherein it was held in clear terms that when LSHS was used as a fuel for generating electricity which, in turn, was used in or in relation to the manufacture of dutiable as well as fully exempted finished products, to the extent the was used as a fuel for generating electricity which was used in or in relation to the manufacture of fully exempt finished products, Cenvat credit would be required to be reversed. He also pleaded that the respondent while taking Cenvat credit in respect of fuel used for generating electricity which was used for manufacture of dutiable as well as exempted finished product had never declared to the Department that they had also taken Cenvat credit in respect of the fuel which was used for generation of electricity which, in turn, was used in the manufacture of fully exempted finished products and, that in view of this longer limitation period of five years has been correctly invoked and penalty under Rule 13 of Cenvat Credit Rules, 2002 readwith Section 11AC and under Erstwhile Rule 57I (4) of Erstwhile Central Excise Rules has been correctly imposed.

2.2 Shri S. Yadav, Advocate, the learned Counsel representing the respondent, defended the impugned order reiterating the findings of the Commissioner (Appeals) and cited the judgment of Hon'ble Supreme Court in the case of **Maruti Suzuki Ltd. vs. CCE, Delhi – III** reported in **2009 (240) E.L.T. 641 (S.C.)**, wherein drawing our attention to para 13 of the judgment, he pleaded that since the furnace oil has been used as a fuel input for generation of electricity which, in turn, had been used for manufacture of finished goods in the factory, the Cenvat credit has been correctly availed. He also cited the judgment of Hon'ble Punjab & Haryana High Court in the case of **CCE, Delhi – IV vs. Super Auto (I) Ltd.** reported in **2008 (221) E.L.T. 41 (P&H)**, wherein the Hon'ble High Court held that when furnace oil was used as fuel in or in relation to the manufacture of dutiable as well as finished final product neither separate account and inventory was required to be maintained nor an amount @ 8% of the value of the exempted goods was required to be paid. On the question of limitation, he pleaded that the demand is the time barred as longer limitation period is not available to the Department for the reason that there was no wilful suppression with intent to payment of duty on the part of the respondent.

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

4. So far as the merits of the case are concerned, the issue stands finally decided in favour of the Department by judgment of Hon'ble Supreme Court in the case of **CCE vs. Gujarat Narmada Fertilizers Co. Ltd.** (supra), wherein in para 9 and 10 of the judgment, Hon'ble Supreme Court has held thus :-

"**9.** As can be seen from the submissions, the contention of the assessee is that exclusion of fuel-inputs from the purview of sub-rule (2) of Rule 6 would mean that such inputs are also automatically excluded from sub-rule (1) whereas according to the Department sub-rule (1) is a general rule which provides, that except for the circumstances mentioned in sub-rule (2), CENVAT credit shall not be allowed on such quantity of inputs used in the manufacture of exempted goods and even though fuel-inputs are excluded from sub-rule (2), such inputs would still fall under sub-rule (1).

10. In our view, sub-rule (1) is plenary. It restates a principle, namely, that CENVAT credit for duty paid on inputs used in the manufacture of exempted final products is not allowable. This principle is in-built in the very structure of the CENVAT scheme. Sub-rule (1), therefore, merely highlights that principle. Sub-rule (1) covers all inputs, including fuel, whereas sub-rule (2) refers to non-fuel-inputs. Sub-rule (2) covers a situation where common cenvated inputs are used in or in relation to manufacture of dutiable final product and exempted final product but the fuel-input is excluded from that sub-rule. However, exclusion of fuel-input vis-a-vis non-fuel-input would still fall in sub-rule (1). As stated above, sub-rule (1) is plenary, hence, it cannot be said that because sub-rule (2) is inapplicable to fuel-input(s), CENVAT credit is automatically available to such inputs even if they are used in the manufacture of exempted goods. The cumulative reading of sub-rules (1) and (2) makes it abundantly clear that the circumstances specified in sub-rule (2), which *inter alia* requires separate accounting of inputs, are not applicable to the fuel-input(s). However, the said sub-rule (2) nowhere says that the legal effect of sub-rule (1) will stand terminated in respect of fuel-inputs which do not fall in sub-rule (2). In other words, the legal effect of sub-rule (1) has to be applied to all inputs including fuel-inputs, only exception being non-fuel-inputs, for which one has to maintain separate accounts or in its absence pay 8% /10% of the total price of the exempted final products. Therefore, sub-rule (1) shall apply in respect of goods used as "fuel" and on such application, the credit will not be permissible on such quantity of fuel which is used in the manufacture of exempted goods. In our view, the above aspect has not been properly appreciated by the Gujarat High Court in the above case of *M/s. Gujarat Narmada Valley* reported in 2006 (193) E.L.T. 136 (supra).

5. As regards the question of longer limitation period under Rule 13 of the Cenvat Credit Rules, 2002 readwith proviso to Section 11A (1) and Rule 57I (i) (ii) of the Central Excise Rules, 1944, we find that though in this case the respondent were manufacturing dutiable as well as finished final products and knew that a part of the electricity generated out of cenvated furnace oil was being used in or in relation to the manufacture of the exempted finished products, they still took Cenvat credit on the entire quantity of the fuel inputs while in terms of the clear provisions of Rule 6 (1) they should have confined the Cenvat credit only to that quantity of fuel inputs which was required for generating electricity required for use in the manufacture of dutiable finished products and the Department was never informed in this regard. In view of this, we are of the view that the respondent are guilty of suppressing the relevant information from the Department and, therefore, the longer limitation period under proviso to Section 11A (1) of Central Excise Rules, 1944

and Rule 57I (I) (ii) of Central Excise Rules, 1944 has been correctly invoked. For the same reason penalty under Rule 57I (4) of Central Excise Rules, 1944/ Rule 13 of Cenvat Credit Rules, 2002 readwith Section 11AC of Central Excise Rules, 1944 has also been correctly imposed. In view of our above finding, the impugned order is not sustainable. The same is set aside and the order-in-original passed by the original Adjudicating Authority is restored. The Revenue's appeal is allowed.

(Order pronounced in the open court on 21/11/11.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

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