

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/969 -970, 889-891,& 1323/2005 - EX[DB]

Date **07/03/2011**

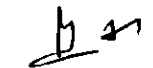
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.
C.C.E. LUCKNOW

Appellant
Vs
Respondent

EVEREADAY INDUSTRIES LTD.

I am directed to transmit herewith a certified copy of **Final order No.243-247/ 2011 EX[DB]** dated **25.02.2011** passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**



Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
EVEREADAY INDUSTRIES LTD.
UNIT:EVERYDAY FLASHLIGHT
PLANT, MILL ROAD, AISHBAGH,
LUCKNOW
 2. Adv. / Consult
MR. RAVI RAGHAVAN, ADV
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029
 3. C.D.R
 4. Bar association. CESTAT, New Delhi
 5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
 6. M/s Centax Publications 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.**

COURT NO. I

Excise Appeals No. 969-970, 889-891 & 1323 of 2005

[Arising out of the Order-in-Appeal No. 429-430, 426, 425, 427 & 428-CE/2004 dated 30/11/2004 passed by The Commissioner (Appeals), Central Excise & Service Tax, Lucknow.]

CCE, Lucknow

Appellant

Versus

M/s Eveready Industries India Ltd.

Respondent

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? :

Appearance

Shri Nitin Anand, Authorized Representative (DR) - for the appellant.

Shri Ravi Radhvan, Advocate - for the Respondent.

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

DATE OF HEARING : 18/01/2011.

DATE OF DECISION : 25/2/2011

Final Order No. 243-247/2011-EX Dated : 25/2/2011

Per. Rakesh Kumar :-

The facts giving rise to these appeals are, in brief, as under.

1.1 The respondent are engaged in the manufacture of Flash Lights and components thereof chargeable to Central Excise Duty under heading 85.13 of the Central Excise Tariff. They were also availing Modvat credit of duty paid on inputs under the provisions of Rule 57A of the Central Excise Rules, 1944. The period of dispute in this case is from February 1998 to November 1998. The respondent after receiving the duty paid inputs, in respect of which Modvat credit had been taken, were sending the same to job workers for processing under job work challans, who were required to return the same within the stipulated time period after completing the required processing. During the period of dispute, as per the provisions of Rule 57F (6) for removal of such modvated inputs either as such or after processing for processing/ further processing to job worker, an amount equal to 10% of the value of such inputs/partly processed inputs, as declared in the challan, was required to be debited and this amount could be recredited if the inputs after completion of the job work are returned within the stipulated period. In these appeals, the Department's allegation is that the respondent, after sending of the modvated inputs to job workers for processing after debit of an amount to equal to 10% of their value, have taken recredit of that amount, even though there is no evidence regarding return of the processed inputs. It is also alleged that in

a number of cases the processed inputs have not been received back even after the expiry of the stipulated period of 180 days and in such cases the department seeks to demand the Modvat credit initially taken in respect of those inputs subject to the adjustment as prescribed under Rule 57F (11) of the Central Excise Rules, which provides that if the inputs or partly processed inputs are not received back in the factory of the manufacturer of the final product within a period of 180 days, the manufacturer shall recalculate the amount of actual credit attributable to such inputs or inputs contained in the partly processed inputs and thereafter he shall adjust the differential amount, if any after taking into account the amount already debited while sending the inputs/partly processed input from his factory. It is on this basis that the Jurisdictional Assistant Commissioner by six orders-in-original each dated 30th June 2003 confirmed the demands of Modvat credit against the respondent in respect of –

(a) the inputs which after being sent to the job workers for processing on debit of an amount equal to 10% of the value have not been returned back within the stipulated period ; and

(b) the inputs sent to job workers for processing in respect of which though recredit has been taken by the respondent, but there is no evidence regarding the receipt of the same within the stipulated period.

1.2 On appeal to Commissioner (Appeals), the Commissioner (Appeals) by the six orders-in-appeals, each dated 30th

November 2004, set aside the Modvat credit demands in respect of the inputs sent to job workers in respect of which it is alleged that the same have not been returned back after processing. She also set aside the Assistant Commissioner's order disallowing the recredit in respect of certain inputs where it has been alleged that the recredit has been taken without any evidence of the return of the inputs. It is against these orders of the Commissioner (Appeals) that the present appeals have been filed by the Revenue.

2. Heard both the sides.

2.1 Shri Nitin Anand, the learned Departmental Representative assailed the impugned orders-in-appeal reiterating the grounds of appeal in the Revenue's appeals and emphasised that –

(a) While under the provisions of Rule 57 F (7) readwith 57F (9), the recredit of duty equal to 10% of the value of inputs/semi-processed inputs debited under Rule 57F (6) could be allowed only when the same after processing are received back in full under the cover of the duplicate copy of challans issued under Rule 57F (4), under which the inputs had been sent to the job-workers, the CCE (Appeals) has wrongly set aside the duty demands without any clear evidence of receipt of the processed inputs in the respondent's factory, as on the dates when the inputs are stated to have been received in the factory of the respondent, the challans showed that the same were still in possession of the job-workers and the said challans were delivered at later dates to the respondent ;

(b) there are no entries of receipt of processed inputs in the RG-23A Pt. I register ;

(c) while CCE (Appeals) in her order has confined herself to the point (b) above, there is no discussion with regard to the serious discrepancies mentioned at (a) above ;

(d) while the Commissioner (appeals) in her order has observed that the Respondent were required to submit every month, the monthly abstract of Annexure IV register required to be maintained under Rule 57G (7), this register was never submitted by the respondent to the Jurisdictional Central excise officers ; and

(e) the CCE (Appeals), without any basis has jumped to the conclusion that all the debits of inputs sent for processing made in RG-23A Pt. I, had a corresponding entry in Annexure IV register.

The learned DR, therefore, pleaded that the CCE (Appeals) has grossly erred in setting aside the demands in respect of the credit initially availed on inputs sent for processing.

2.2 Shri Ravi Raghavan, Advocate, the learned Counsel for the Respondent, defending the impugned order by reiterating the findings of the CCE (Appeals), pleaded that all the inputs sent to job-workers under challans after debiting 10% of the value under Rule 57F (6), have entry regarding their receipt in Annexure IV register maintained under Rule 57F (7) and that in view of this, just from the absence of entries regarding receipt in RG-23A Pt. I register, it cannot be concluded that the inputs, after processing, had not been returned. He also pleaded that the inputs returned after processing from job-worker's premises were not required to

be entered in RG-23A Pt. I register, but were required to be entered in Annexure IV prescribed under Rule 57G (7) and the receipt of the processed inputs from job-workers had been duly recorded in this register.

3. We have carefully considered the submissions from both the sides and perused the records. The dispute in these appeals filed by the Revenue is about the Modvat credit on certain inputs, sent by the Respondent to job-workers for processing after debiting in RG-23A Pt. II account, an amount equal to 10% of the value of the inputs, which, according to the Department, were not received back within the stipulated period of 180 days. The Department, therefore, seeks recovery of the Modvat credit taken by the respondent after adjusting 10% of the value already debited at the time of sending to the job-workers. On this point, the findings of the Assistant Commissioner, which are identical in each of the Six orders in original, are as under :-

"As regards the demand of duty amounting to, being 25% of the value of such inputs as has been claimed by the party erroneously, the provisions of Rule 57F (11) lays down - If the inputs are partially processed inputs are not received back in the factory of the manufacturer of final product within a period of 180 days, the manufacture shall recalculate the amount of actual credit attributable to such inputs or on inputs contained in the partially processed inputs and he shall adjust the differential amount, if any, after taking into account the amount already debited while sending the inputs or partially processed inputs from his factory; therefore it is the party who has to

calculate the actual amount and adjust the differential amount with the concurrence of the Assistant Commissioner, Division - I, Lucknow, otherwise the demand of Rs. may be treated as confirmed."

From the above, it will be seen that Assistant Commissioner while confirming the demand of Modvat credit after adjusting 10% of the value already debited, in respect of the inputs sent to job- workers which are alleged to have not been returned within the stipulated period of 180 days, has not given any findings on the point as to whether the processed inputs had been returned or not.

4. The CCE (Appeals), while holding that the inputs sent to job-work challans had been received back by the respondent, has not given any finding in respect of the allegations of the Department that on the dates when the inputs were stated to have been received back, the said challans showed that the same were still in possession of the job-workers and the said challans were delivered at a later date to the Respondent. Similarly there is no finding in respect of the allegation that the monthly abstract of Annexure IV register maintained under Rule 57G (7) was never submitted to the Range officer while the CCE (Appeals) has relied on the entries regarding receipt of processed inputs in that register.

5. Since the stock register of goods sent for processing/job-working (Annexure - IV) had been prescribed by the Board's

Circular No. 265/99/96-CX dated 12/11/96, if the entries in the register show the receipt back of the inputs from the job-workers, within the stipulated period, the recredit of the amount equal to 10% of the value of the inputs/semi-processed inputs has to be allowed. But there should be no doubt about the genuineness of the entries in Annexure IV register regarding the receipt of the inputs. The CCE (Appeals) while accepting the respondent's contention that the inputs sent to job-workers for processing had been received back from them, has not addressed at all the objections of the Department in this regard, as mentioned in para 4 above. The matter, therefore, has to be remanded for de-novo consideration of these issues.

6. The impugned orders-in-appeal are, therefore, set aside and the matters are remanded to CCE (Appeals) for denovo decision after examining the Department's objections to permitting Modvat credit.

7. The Revenue's appeals stand disposed of, as above.

(Pronounced in open court on 25/2/11.)

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member (Technical)

PK