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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 **28/03/2011**

Appeal No. E/142 /2005 - EX[DB]

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

To :
M/S GODSON SPINNERS LTD.
VILLAGE JAINTIPUR DISTT AMRITSAT PUNJAB

**M/S GODSON SPINNERS LTD.** Appellant

Vs

Respondent

**C.C.E. CHANDIGARH (JALLANDHAR)**

I am directed to transmit herewith a certified copy of **Final order No.305 / 2011 EX[DB]** dated 15-3-11 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 (JALLANDHAR)**
C.R.BUILDING, PLOT NO. 19,
SECTOR 17-C, CHANDIGARH.

2. Adv. / Consult
**MR.V. LAXMIKUMARAN**
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 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**

**DATE OF HEARING : 15/03/2011.**
**DATE OF DECISION : 15/03/2011.**

**Excise Appeal No. 142 of 2005**

[Arising out of the Order-in-Appeal No. 510/CE/APPL/JAL/2004 dated 28/10/2004 passed by The Commissioner (Appeals), Central Excise, Jalandhar.]

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 |

M/s Godson Spinners Ltd. Appellants

Versus

CCE, Jalandhar Respondent

**Appearance**

S/Shri B.L. Narasimhan and Hemant Bajaj, Advocates – for the Appellants.

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

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

FINAL Order No. 305/2011-EX Dated : ______________

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

Heard the advocate for the appellants and DR for the respondent. This appeal arises from order dated 28th October 2004 passed by Commissioner (Appeals), Jalandhar. By the impugned order the appeal filed by the appellants against the order of the Adjudicating Authority has been dismissed. The Additional Commissioner, Jalandhar by its order dated 18th December 2003 has disallowed the Cenvat credit to the tune of Rs. 20,84,742/- while confirming demand of Rs. 14,70,206/- alongwith the interest and penalty of Rs. 20,84,742/- against the appellants.

2. The appellants are engaged in manufacture of cotton yarn classifiable under Chapter 52 and also availed Cenvat credit on the capital goods. The appellants accordingly availed Cenvat credit to the tune of Rs. 10,55,996/- during the period from September 2001 to March 2002 being fifty per cent of the total credit of Rs. 20,84,742/- pertaining to the capital goods received by them during the period from April 2000 to September 2000. On 13/12/2000 the appellants surrendered their Central Excise registration as the exemption limit of SSI units was raised to Rs. 1,00,00,000/- under Notification No. 47/2000 dated 1st September 2000 and at the time of surrendering registration they had a credit balance of Rs. 10,42,371/- out of the said total Cenvat credit amounting to Rs. 20,84,742/- in relation to the

duty paid on the capital goods during the period from April 2000 to September 2000. Subsequently in the year 2001, SSI exemption on cotton yarn was withdrawn and accordingly the appellants again got registered with the Central Excise Department on 2nd March 2001. Immediately thereupon they proceeded to avail the benefit of the credit to the tune of Rs. 10,42,371/- being the opening balance of the Cenvat credit in March 2001 which was lying in the balance account at the time of surrender of the registration in December 2000. During the period from September 2001 to March 2002 the appellants utilised the said balance credit availed in relation to the capital goods. Consequently, having revealed the same from RT-12 return, show cause notice dated 21st December 2001 and 30th October 2002 came to be issued to the appellants which were contested by the appellants and consequently the said order came to be issued.

3. While assailing the impugned order the learned advocate for the appellants submitted that the authorities below erred in denying the credit availed on the capital goods by wrongly applying the provisions of law which are otherwise applicable to the credit earned on the inputs. Since the credit in question was earned in relation to the duty paid on the capital goods and there being no provision in the excise law and rules made thereunder for lapsing of such credit merely on the ground of surrender of registration certificate or on the ground of availing the exemption benefit under a notification granting such exemption based on

value or quantity of clearances made in a financial year, according to the learned advocate the authorities below erred in denying the credit and confirming the demand against the appellants. In that regard attention was drawn to the provisions of law comprised under Rule 57 AC, 57 AD and 57 AG of the erstwhile Central Excise Rules, 2000 published under Notification No. 27/2000-CE (NT) dated 31st March 2000, Notification No. 8/2000-CE dated 1st March 2000 and placed reliance in the decision of the Tribunal in the matter of **J.R. Herbal Care India Ltd. vs. CCE, Noida** reported in **2010 (253) E.L.T. 321 (Tri. – Del.)**.

4. The DR on the other hand submitted that the appellants having surrendered the registration certificate, they could not have claimed the benefit of enjoying the credit which was earned by them during the period of subsistence of registration in their favour and in that regard placed reliance in the decision of the Tribunal in the matter of **Shasun Pharma Ltd. vs. CCE, Trichy** reported in **2003 (162) E.L.T. 882 (Tri. – Chennai)** and **CCE, Pune – II vs. Arihant Twisting Industries** reported in **2008 (223) E.L.T. 258 (Tri. – Mumbai)**. He further submitted that considering the elaborate discussion justifying the finding in the impugned order, the same do not call for interference.

5. It is not in dispute that the registration certificate was surrendered by the appellants on 13th December 2000. However, the said surrender was on account of exemption limit of SSI unit having been raised to Rs. 1,00,00,000/- under Notification No.

47/2000 dated 1st September 2000. As the law stood at the relevant time, undisputedly the appellants being entitled to avail the benefit under the said notification were not required to be armed with the excise registration and, therefore, they had lawfully surrendered the said registration.

6. It is also not in dispute that during the period from April 2000 to September 2000 the appellants procured capital goods and in respect of the duty paid thereon earned the credit to the tune of Rs. 20,84,742/- and considering the provisions of law in force at the relevant time in terms of Rule 57 AC were entitled to avail fifty per cent of the said credit for the financial year in which it was earned and the balance fifty per cent in any subsequent financial year. It is also undisputed fact accordingly prior to the surrender of registration certificate they had to their account such credit earned in relation to the capital goods as was disclosed by them in their RG register. It was the same balance credit they sought to avail pursuant to re-registration being obtained on 2nd March 2001. The controversy arose here, that is, whether the appellants were entitled to avail such credit which had remained in balance prior to surrendering the registration, once they re-registered in March 2001. The benefit in that regard is sought to be denied essentially with reference to Rule 57 AG (2) and on the ground that pursuant to surrender of registration certificate the credit so earned had lapsed.

7. Rule 57 AG (2) reads thus :-

"A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been availing of the credit of the duty paid on inputs before such option is exercised, shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export."

8. It is not in dispute and indeed cannot be disputed that Rule 57AG (2) is entirely in relation to the inputs. Plain reading of the said sub-rule would disclose that it nowhere applies to the credit earned out of duty paid on the capital goods. It only relates to the credit availed from duty paid on inputs. In fact, the DR also has fairly not disputed the said contention. He has, however, submitted that the logic behind the said rule would also apply to the credit earned from the duty paid on capital goods as has been held by the lower authorities. It is difficult to accept this contention on behalf of the Department.

9. The Rule 15AC (2) (a) provides that the Cenvat credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year. Sub-clause (b) thereof provides that the

balance of Cenvat credit may be taken in any financial year subsequent to the such financial year. Only proviso to the said clause is that the capital goods should be still in possession and use of the manufacturer of the final products in such subsequent years. In other words, whatever credit is earned out of the duty paid on the capital goods in a financial year, fifty per cent thereof can be utilised in the same year and the balance fifty per cent can be utilised in the subsequent financial year or years subject to that such capital goods on which the duty was paid and the credit was earned must continue to be in possession and use of the manufacturer of the final products.

10. The Rule 57AD (3) provides that no credit of the specified duty shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods (other than final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in the financial year). Apparently the exclusion from availing the benefit of the credit earned on the duty paid on the capital goods in relation to those used in the manufacture of the exempted goods is not applicable in cases where the exemption from payment of duty on final products is availed on the basis of a Notification granting such exemption is based upon the value or quantity of clearances of such final product in a financial year.

11. We have not been pointed out any other provision which could deal with the subject of lapsing of credit earned in relation

to the duty paid on capital goods nor a provision which could result in denial of benefit of credit in balance at the time of surrender of the registration. Taking into consideration the above referred provisions of law readwith Rule 57AG (2) it would apparently disclose that Rule 57AG (2) nowhere relates to the credit earned from the duty paid on capital goods but is essentially restricted to the credit earned from the duty paid on inputs and, therefore, the authorities below clearly earned in applying the logic behind the said Rule 57AG (2) to the credit earned from the duty paid on capital goods.

12. The decision in **Shasun Pharma Ltd. vs. CCE, Trichy** (supra) case was essentially in the facts where the manufacturer has ceased to continue with the activity of manufacturing. Obviously Rule 57 AC (2) (b) and particularly proviso thereof clearly debarred such person from availing the benefit of such credit. As regards the decision in **CCE, Pune – II vs. Arihant Twisting Industries** (surpa) case though the facts are not very clear, it appears that consequent to the surrender of certificate there was no manufacturing activity by the concerned company. In any case, considering the provisions of law as referred to above, therefore, mere surrender of registration, irrespective of the fact that the manufacturing activity had continued availing the benefit of SSI notification, it cannot be said that the appellants were not entitled to avail the benefit of the balance credit available with them at the time of earlier surrender of

registration and more particularly in view of proviso to Rule 57 AC (2) (b).

13. In **J.R. Herbal Care India Ltd. vs. CCE, Noida** (supra) case it was clearly observed that mere surrender of registration will not disentitle the manufacturer from availing such credit. Obviously the observation was made after taking note of relevant provision of law. It is true that the decision relates to the period subsequent to the enforcement of Cenvat Credit Rules, 2004. However, the situation is not different from what has been described on the basis of provisions referred to above.

14. For the reasons stated above, therefore, the impugned order cannot be sustained and is liable to be set aside. The appellants were entitled for availing the said credit and no fault can be found in relation to the utilisation thereof by the appellants. Hence appeal succeeds, the impugned order is hereby quashed and set aside with consequential relief.

**(Justice R.M.S. Khandeparkar)**
**President**

**(Rakesh Kumar)**
**Member (Technical)**

PK