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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/2824-2825/2005 - EX[DB] Date **28/03/2011**

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

To :
C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S SALUJA EXIM. Respondent

I am directed to transmit herewith a certified copy of **Final order No.308-309/ 2011 EX[DB]** dated 22-2-11

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 SALUJA EXIM.
90 HPSIDC BADDI DISTT-SOLAN
H.P.

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.
16. M/S. SALUJA EXIM
(NOW M/S. GEL MANUFACTURING CO. LTD.)
106, HPSIDC, BADDI, DISTT. SOLAN (HP)

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 2824-2825 /2005-Ex(BR)

[Arising out of Order-in-Appeal No. 196-197/ CE/CHD/2005 dated 24.5.2005 passed by Commissioner (Appeals) Central Excise, Chandigarh]

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 should 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 Departmental authorities? : Yes

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Excise Appeal No. 2824/2005-Ex(BR)

Commissioner of Central Excise
Chandigarh — Appellants

Vs.

M/s. Saluja Exim (Now SE Exports) — Respondent

Excise Appeal No. 2825 /2005-Ex(BR)

Commissioner of Central Excise
Chandigarh — Appellants

Vs.

M/s. Saluja Exim (Now SEL Manufacturing Co.Ltd.) — Respondent

Appearance:

Shri B.L. Narasimhan, Advocate and Shri Hemant Bajaja, Advocate for the Appellants
Shri B.K. Singh, Jt.CDR for the Respondent

CORAM:

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

Date of Hearing/decision : 22.2.2011

FINAL **ORAL ORDER No.** 308-309/2011-EX

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Since common questions of law and facts arise in both the appeals, they were heard together and are being disposed of by this common order. We have heard at length Jt. CDR for the appellants and learned Advocates for the respondents. We have also perused the records.

2. Both the appeals arise from a common order passed by the Commissioner (Appeals) Chandigarh on 24.5.05 whereby the orders-in-original disallowing the Cenvat credit and confirming the demand for interest and imposition of penalty have been set aside. The Joint Commissioner, Chandigarh by his order dated 6.5.2005 had disallowed the Cenvat credit to M/s. Saluja Exim to the extent of Rs.15,98,385/- and while imposing the penalty of equal amount, had also demanded interest on the amount due. The Jt. Commissioner by his another order of the same date had disallowed the credit to the extent of Rs. 19,45,955/- while imposing penalty of equal amount and confirming the

demand of interest against M/s Saluja Exim Ltd. (now M/s. SEL Manufacturing Co.Ltd.).

3. By the said orders passed by the Jt. Commissioner, the credit sought to be availed by the assessees by taking resort to Rule 9A of the Cenvat Credit Rules read with notification No. 35/2003 CE (NT) dated 10.4.2003 and notification No. 47/2003 CE (NT) dated 17.5.2003 was sought to be disallowed on the ground that the inputs and the goods in respect of which the credit was sought to be availed were not lying in stock of the assessee as they were already removed from their factory premises and were lying in the port area. The Commissioner (Appeals) while setting aside the said orders held that the credit, in terms of said provisions of law, was available irrespective of place where goods were stored whether in the factory premises or in godown or at some other premises and therefore, the assessees were justified in claiming the said credit and the same could not have been disallowed to them.

4. The department aggrieved by the said order is in appeal against the order passed by the Commissioner (Appeals).

5. Jt. CDR while assailing the impugned order submitted that in view of the fact that the adjudicating authority on appreciation of facts had held that the goods had already been cleared from the factory premises, the respondents were not eligible for availing the benefit of notification in question. Therefore, they could not avail the credit which is sought to be granted to them under the impugned order. He further submitted that the very fact that the goods were removed to the port area

after issuance of the invoices referring to the buyers orders, the goods were cleared from the factory premises and hence, it could not have been said that the goods were still 'lying in stock with the assessee'. Mere storage of the goods for the purpose of completion of export formalities cannot be construed as the goods 'lying in stock with the manufacturer'. Referring to the Circular issued by the Board bearing No. B-3/3/2003-TRU dated 20.3.2003, it was submitted on behalf of the department that the same clarifies that the goods must be within the factory premises in order to classify them as the 'goods lying in stock' and once they are cleared from the factory premises on issuance of invoices, it could not have been said that they are still lying in stock with the assessee. It was further sought to be contended by the Jt. CDR that the very purpose of grant of credit is to enable the assessee to utilise the same towards payment of duty on the final product. In the absence of final products being becoming dutiable, question of utilising credit availed on the inputs, either in the process of manufacture of the final product or already consumed in the final product in stock or even in 'lying in stock' as such cannot arise as the credit on such inputs cannot be utilised in relation to the exempted or non-dutiable goods. The credit can be availed only in relation to duty paid inputs which are to be utilised in the dutiable products. The provisions of law and the notification cannot be construed contrary to the basic scheme of the credit available under the Rules.

5. The learned advocate for the respondent, on the other hand, taking us through Rule 9A of the said Rules, the said circular dated 20.3.03 as well as circular No. 703/19/2003-CX dated 20.3.03 and the notification in question submitted that prior to 1.4.2003, the garments were not subjected to payment of duty and therefore, there was no question of goods being removed by following any procedure regarding payment of duty. He further submitted that perusal of both the circulars would apparently disclose that the goods which are stored in the factory premises or even in the some other premises undisclosed to the department can also be considered as the 'goods lying in stock'. Otherwise Circular dated 20.3.03 would not have required the assessee to declare the address of the premises where the goods are stored in addition to already declared premises. He further submitted that both the Circulars specifically refer to the stock lying "with the manufacturer" and not at the unspecified premises as such which would disclose that all the goods which were under the control of the assessee on 31.3.03 were eligible for the purpose of claiming the benefit under the said notification. Very fact that the Board has understood availability of the credit in terms of notification in relation to the stock lying with the manufacturer and not stock lying in the particular premises as such, according to the learned advocate, the expression 'stock lying in stock" has to understood in the context in which it has been given in the notification and as understood by the Board. Drawing our attention to unreported decision of the Tribunal in the matter of

E/1590/05 and connected matters delivered on 5.10.2010 being final order No. 771-777/2010-Ex, he submitted that it was clearly held therein that for the purpose of availing benefit in terms of transitional provision comprised under Rule 9A what is required was the control of the assessee over the goods. Referring to Rule 11 of the Cenvat Credit Rules and particularly sub rule (2) thereof, it was sought to be contended on behalf of the respondent that the provisions thereunder are clearly distinguishable from Rule 9A in the sense that in case of Rule 9A there was no reason for the assessee to maintain any documentary evidence regarding availment of credit as there was no occasion for them to pay the duty and to avail the credit, whereas in case of circumstances which are covered under by Rule 11 (2), the assessee who opts for exemption from payment of duty was required to pay an amount equivalent to the credit if any allowed to him in respect of inputs lying in stock or in process or contained in final product lying in stock prior to such option being exercised and therefore obviously he was required to maintain the documentary evidence in relation to availment of credit. This being basic difference between two statuary provisions, the expression used in Rule 11(2) as "lying in stock" cannot be understood in the same sense as has to be understood in relation to Rule 9A.

6. The basic facts which are relevant for the decision in the matter are not in dispute. Undisputedly the goods were found having stored at the port area after being removed from the factory premises. The basic

controversy in the matter is whether the goods so stored can said to be 'goods lying in stock with the manufacturer'.

7. The respondents claim benefit of notification No. 35/03 CE (NT) dated 10.4.03 as amended by Notification No. 47/2003 CE (NT) dated 17.5.03. The said notifications were issued in exercise of powers under sub rule (3) of Rule 9A of the Central Excise Rules, 2002.

8. Rule 9A of the said Rules was brought on the statute book with effect from 1.4.2003 pursuant to notification in that regard having been issued bearing No. 25/2003 CE (NT) dated 25.3.03. The purpose behind the introduction of notification under Rule 9A was that the garment product which are exempted from payment of duty till the end of financial year 2002-2003 was brought within the net of excise duty with effect from 1.4.2003 and therefore, manufacturers were entitled to avail the credit in relation to the duty paid on the inputs utilised in such duty payable final product. In order to enable the manufacturers to use the inputs lying in stock as also at the same time to avail the credit in relation to the duty paid on such inputs, the specific provision was made providing certain facility as regards the inputs in stock as on 1.4.03. On account of availment of exemption in relation to the final products, the manufacturers were not under obligation to maintain documentary evidence regarding payment of duty on such inputs. To overcome resultant hardship in such situation in relation to the inputs in stock with the assessee on 1.4.2003 the provision under rule 9A was introduced.

9. Accordingly, the Government issued the said notifications Nos. 35/03 CE (NT) and 47/2003- CE (NT). The said notifications declared that the amount of credit of duty as specified in column '3' of the table attached to the said notification paid on the inputs lying in the stock or in process or contained in the finished goods lying in stock as specified in the corresponding entry in column 2 of such table shall be available in the manner specified in the Explanation clauses. One of such specified goods was article of apparel and clothing accessories falling under Chapter 61 which included the product manufactured by the respondents.

10. The Circular dated 28.3.03 issued by the Board clarified that in case the stock declared by the assessee is kept in a place other than the registered or to be registered premises, then the address of such premises should also be declared by the assessee in the stock declaration.

11. Circular dated 25.3.03 was issued taking into consideration the changes brought about under Central Excise Rules, 2002 and particularly in relation to the procedure to be followed by in respect of textile and textile articles. Clause A(j) of the said circular provided that the assessee has to work out the credit as explained in the said para and in case of processed fabrics only the stock lying with the manufacturer would be entitled for such credit.

12. In unreported decision delivered on 5.10.10, the Tribunal while dealing with the matter relating to the goods which were in transit and

to be received in the factory premises of the assessee held that such goods cannot be claimed by the assessee to be lying in stock with him. It was held that the procedure of law clearly requires the goods to be capital goods or inputs to have been brought in the factory premises. And unless the articles enter factory premises they cannot be called as the capital goods or the inputs in terms of Rule 3 of the Cenvat Credit Rules and the duty paid on such articles can not generate the credit under the provisions of the Cenvat Credit Rules. At the same time, it was also observed that it does not mean that in case of insufficiency of the place at the registered premises to store the goods after temporary arrangements to be made to store the goods at some other places disclosed to the department, the goods stored at such places, could not be considered as the goods lying in stock.

13. Taking into consideration, the undisputed facts and applying the provisions of law, it cannot be disputed that the credit in terms of the said Rules can be availed in relation to the duty paid on the inputs only in cases where the final product is dutiable and the same is not exempted from payment of duty or is not subjected to nil rate of duty. Being so, as rightly pointed out by Jt. CDR while extending the scope of Rule 9A and the notifications issued thereunder one cannot forget the said basic requirement of law. Bearing the same in mind one has to ascertain the exact connotation of the expression "lying in stock" used in the said Rule as well as in the notification. It can hardly be disputed that the meaning assigned to the said expression used in the notification can not

be different from the one which is to be assigned to the same expression used in the said Rule. At the same time, the advocate for the respondent is also justified in contending that the difference between the scope of the said expression under Rule 11(2) and Rule 9A, as also that the situation in which sub-rule 2 would attract in cases of availability of sufficient documentary evidence regarding the credit already availed by the assessee, whereas in case of situation wherein sub-rule (3) would attract in a situation where there is no occasion for the assessee to have documentary evidence in relation to the credit availed prior to 1.4.03, since the manufacturer of such product were not entitled to avail the credit, as its final product ~~is~~ was exempt from payment of duty. However, the meaning of the expression "lying in stock" can not be construed by merely referring to this difference. As rightly pointed out by the learned advocate for the respondent the meaning thereof will have to be understood by taking into consideration the context in which the said expression has been used in rule 9A. Simultaneously, the basic concept of the Cenvat credit as well as entire scheme of said credit under the said Rules is also to be borne in mind.

14. Rule 9A while using the expression “lying in sock” specify that the same should be as on 31st day of March, 2003. As already been pointed out above Rule 9A was introduced in order to enable the manufacturer of the exempted products to avail the benefit of the credit in relation to the duty paid on inputs and lying in stock with them, on 1.4.03, as therefrom they would be liable to pay duty on their final

product, and on account of entitlement of exemption, they were not obliged to maintain the record of duty paid on inputs prior to 1.4.03. In other words, it was essentially to facilitate the manufacturer to arrive at the exact quantity of credit available to them in relation to the inputs to be utilised in the final product, which would be subjected to payment of duty, that therefore, the inputs lying in stock to be so utilised were made available to the manufacturers to avail credit in respect of duty paid on such inputs. This is clear from the said provision of law itself. One can certainly analyse the circulars issued by the Board to ascertain whether there is any further explanation in this regard issued by the Board.

15. The notification uses the expression "inputs lying in stock" without any further explanation in that regard, and rightly so, as the notification has been issued essentially under sub-rule (3) of Rule 9A and obviously therefore, the meaning to be attached to the said expression in the said notification cannot be different from the one to be attached to the said expression used in rule 9A.

16. The Circular dated 28.3.03 clarifies that even the goods which were stored in the premises other than the registered one or to be registered premises, the declarant has to give address of such other premises. Similarly, Circular dated 25.3.03 clarifies that in the case of processed fabrics only the stock lying with the manufacturer would be entitled for availability of such credit.

17. Merely because the circular specifies that even the goods stored in premises other than the registered and to be registered premises that

itself cannot be construed to mean that the goods which did not form part of the goods which are to be utilised in the manufacture or in relation to the manufacture of final products which would be subjected to payment of duty would also fall under the expression of 'goods lying in stock' on 31.3.2003. Bearing in mind entire scheme of the Cenvat Credit Rules and the provision in respect thereof while understanding the meaning of different expressions used in the statutory provision in relation to the said concept, the expression has to be construed in consonance with the said scheme and the meaning of the expression Cenvat credit. The credit being available only in relation to the duty paid on goods to be utilised in the manufacture or in relation to manufacture of the dutiable final product to assume the meaning of the goods lying in stock on 31.3.03 to include the goods which would not be utilised in the manufacture or in relation to the manufacture of the dutiable final product would be stretching the meaning too far and to the extent it would virtually result in defeating the very purpose of Rule 9A and the notification issued thereunder. It is not mere control of the goods by the assessee for availment of Cenvat credit that is sufficient for the purpose of availment of the credit in terms of the provision of law in relation to Cenvat credit. Apart from the goods being under the control of the assessee, Rule 3 of Cenvat Credit Rules clearly requires such goods to be utilised in the manufacture of dutiable final products or in relation to manufacture of dutiable final products. The benefit under other rules of the Cenvat Credit rules can not be availed or granted ignoring the basic provision comprised under Rule 3.

18. The observation in the decision dated 5.10.2010 to the effect that in case of insufficiency of place at the registered premises to store the goods after temporary arrangement to be made to store the goods at some other place disclosed to the department, the goods stored at such places could also be considered as the goods in stock cannot be construed to mean that such goods would include the goods which were not ultimately utilised in the manufacture of non-dutiable goods.

19. Considering the undisputed facts, the goods were removed to the port area on issuance of the invoices disclosing the buyers name. Admittedly, they were not subjected to duty liability at the time of clearance of goods from the factory. Obviously therefore, the goods were not final products which were subjected to payment of duty. Hence, the inputs in such goods were not entitled to avail the credit in relation to the duty paid thereon and hence they were rightly excluded from being considered as the 'goods lying in stock'.

20. As far as the penalty aspect is concerned, undisputedly the matter relates to interpretation of provision of law in respect of notification and therefore question of imposition of penalty does not arise. Thus, the appeal partly succeeds. The impugned order to the extent it set asides the order passed by the adjudicating authority disallowing the Cenvat credit is hereby set aside and the order of the adjudicating authority disallowing the Cenvat credit and confirming the demand of interest is

hereby restored and confirmed. The order as far as setting aside the penalty is concerned, the same does not require any interference and the appeal to that extent and the challenge is rejected.

21. Appeals are accordingly disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Member(Technical)

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