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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/1687/2008 - EX[DB] & E/2577/2010-EX
E/S/2327/2010-EX

Date **05/05/2011**

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

To :
M/S RAJHANS PRESSING PVT. LTD.
SSI, PLOT NO.5,NH-2, NIT FARIDABAD.

M/S RAJHANS PRESSING PVT. LTD. Appellant

Vs

C.C.E. DELHI IV **STAY ORDER NO. 515/2011-EX** Respondent

I am directed to transmit herewith a certified copy of **Final order No.396-397 2011 EX[DB]** dated 01-4-11 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. DELHI IV
NEW CGO COMPLEX, NH-IV,
FARIDABAD, HARYANA 121001.

2. Adv. / Consult
MR.N.K. SHARMA
393,SECTOR-21/D,FARIDABAD

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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file
14. 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

Date of Hearing : 1.4.2011

Excise Appeal No. 1687 of 2008 and 2577 of 2010 with Excise stay No. 2327 of 2010

[Arising out of the common Order-in-Appeal No. 31/CE/Appl/DLH-IV/2010 dated 30.3.2010 passed by the Commissioner, Central Excise (Appeals), Faridabad]

Coram:
Hon'ble Shri Justice R. M. S. Khandeparkar, President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s Rajhans Pressings Pvt. Ltd. Appellant

Vs.

CCE, Delhi-IV Respondent

Appearance:

Appeared for Appellant : Shri N.K. Sharma, Advocate
Appeared for Respondent : Ms. Monika Batra, DR

Coram:

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

FINAL Order No. 396-397/2011-EX dated..........
STAY Order No 515/2011-EX
Per Mathew John:

In this proceeding two appeals filed by the same Appellant are being decided together because they are very closely interlinked.

2. The First Appeal namely 1687 of 2008 is in the matter of refusal by the department to give a combined central excise registration for two units of the Appellants separated by a road. The second Appeal is in the matter of removal of capital goods from one premises of the Appellant registered as his factory to the another premises across the road sought to be registered together with the first premises for which registration, permission is denied by the department.

Appeal No. E/1687/2008

3. This Appeal is against the order dated 16-06-2008 issued by Commissioner of Central Excise Delhi-IV. In this order the Commissioner rejected the request of the Appellant's application dated 16-04-2008 and follow up letter dated 03-06-2008 seeking a combined registration for their existing registered premises at Plot No. 5, NH-2, NIT, Faridabad (hereinafter referred to as "Premises-I") and Plot No.1, NH-2 NIT Faridabad (hereinafter referred to as "Premises-II") which are separated by a public road. The Appellant had submitted that both the premises are different parts of the same factory holding the same PAN and same Sales Tax/VAT Registration, having common administration and common work force. The Appellant had represented that the Appellant is eligible for common registration as per para 3.2 of Chapter 2 of the Central Excise Manual issued by CBEC.

4. The adjudicating authority noted that the appellant is manufacturing sheet metal components at Premises-I and manufacturing of tools and dies, needed for manufacturing activity at Premises-I, in the factory at Premises-II. The Commissioner observed that the goods manufactured at Premises-II are in the nature of capital goods and cannot become part of interconnected manufacturing process of final products at Premises-I. The Commissioner also noted the decision of the Tribunal in **Amforge Industries Vs. CCE Pune-I** - 2004 (176) ELT 702 to the effect that tools and dies are final products themselves and came to the conclusion that the processes at the two premises were not

interconnected. Based on this reasoning the Commissioner refused the request of the Appellant for a common registration. Aggrieved by this order the Appellant is before the Tribunal.

5. The Counsel for the Appellant submits that the case of the Appellant falls within the guideline given by CBEC for granting common registration for two premises separated by a public road. His submission is that the Commissioner cannot refuse such permission when the Appellant falls within the norm prescribed by CBEC in this regard.

6. The Appellant assails the finding of the Commissioner that making tools and dies is not a process interlinked to manufacture of final products because such final product cannot be made without tools and dies so manufactured. It is also argued that if a separate registration is taken and if they pay duty on tools and dies manufactured in Premises-II and clear it to the factory at Premises-I they can take Cenvat credit of duty so paid and the whole exercise will be revenue neutral.

7. The Ld DR on the other hand argues that the products manufactured at Premises-II are final products themselves and there is no reason to give common registration.

8. Considered arguments on both sides.

9. Para 3.2 of Chapter 2 of CBEC's Excise Manual for Supplementary Instructions is relevant in the mater. The same is re-produced below :-

> "3.2 Separate registration is required in respect of separate premises except in cases where two or more premises are actually part of the same factory (where processes are interlined), but are segregated by public road, canal or railway-line. The fact that the two premises are part of the same factory will be decided by the Commissioner of Central Excise based on factors, such as :

(1) Interlinked process product manufactured/produced in one premises are substantially used in other premises for manufacture of final products.

(2) Large number of raw materials are common and received/proposed to be received commonly for both/all the premises.

(3) Common electricity supplies.

(4) There is common labour/work force.

(5) Common administration/work management.

(6) Common sales tax registration and assessment.

(7) Common Income Tax assessment.

(8) Any other factor as may be indicative of inter-linkage of the manufacturing processes.

This is not an exhaustive list of indicators nor is each indicator necessary in each case. The Commissioner has to decide the issue case by case."

10. The moulds and dies manufactured at Premises-II is required for manufacturing activity at Premises-I and such goods are being used in premises-I and not for sale to any independent buyers. So the observation of the Commissioner that the manufacturing processes at the two plots are not interconnected is wrong. Further there is no condition that such registration can be given only if the products manufactured in one of the factories is not final products but only intermediate products. In fact what is intermediate product and what is final product depends on the manufacturing facilities of individual manufacturers and there is no clear rule to define such products. What is final product for one factory is quite often starting point for another factory. Taking the present case itself, the manufacturer may place order on another manufacturer to make tools and dies needed by him or make it himself. In the present case the Appellant has opted for the latter option and there is no provision in excise rules to discourage such activity. If a common registration is given the Appellant does not save any incidence of taxation but only saves some work of maintaining separate records and filing separate returns.

11. The two factories at Premises-I and Premises-II satisfy the parameters at (2), (4), (5), (6) and (7) specified by CBEC as reproduced in para-9 above. So we note that the Appellant falls within the norms prescribed by CBEC for granting common registration for two premises separated by a public road and we find that there is no merit on the order of the Commissioner and it deserves to be set aside and the request of the Appellant for common registration is to be granted. We order accordingly.

Appeal No.2577/2010 and Stay Petition No.E/S/2327/2010

12. This Appeal is against the order dated 30-03-2010 of the Commissioner (Appeal) confirming the adjudication order dated 31-08-2009, with slight modification in the matter of penalty imposed. The adjudicating authority confirmed a demand for Rs. 4,65,516/- along with interest and penalty for equal amount. The ground for the demand is that during Oct 2005, the Appellant removed the capital goods in their tool room at Premises-I to their factory at Premises-II separated by a road without getting that Premises included in their registered premises and without reversing Cenvat credit taken on the capital goods.

13. The counsel for the Appellant submits that with the expansion of business, availability of space at Premises-I became a problem and the Appellant shifted the process of manufacture of tools dies to Premises-II belonging to the Appellant. Since the equipment were being shifted to Appellant's own premises for own manufacturing activities the Appellant was under the impression that there was no requirement to reverse Cenvat credit taken when such goods were received into their factory at Premises-I. Appellant submits that there was no undue advantage accruing to them and they had no intention to evade any duty. The Appellant argues that if at all the Appellant was to reverse any duty at the time of shifting, the Appellant would have been eligible to take credit of such reversed credit for the factory at Pemises-II and the whole exercise would have been revenue neutral. It is argued that

the whole matter is just a procedural irregularity of not applying for including the new premises in their registered premises. It is further argued that since this is only a procedural irregularity the substantive right of the Appellant to avail of Cenvat credit for duty paid on the capital goods cannot be denied.

14. They also have a contention that the capital goods could have been removed to the premises of a job worker under Rule 4 (5) (a) of the Cenvat Credit Rules without reversal of credit, though subject to certain conditions regarding return of the goods within 180 days. When the rules allow such latitude, removal of the capital goods to another premises adjacent to the factory of the Appellant cannot result in any substantive offence.

15. Thus it is argued that the whole matter is just a matter of procedural irregularity involving no loss of revenue to the department and no intent to evade payment on the part of the Appellant and hence the matter should be treated leniently and closed without any penal consequence to the Appellant.

16. The Learned DR on the other hand contests that under Rule 3(5) of the Cenvat Credit Rule when any capital goods are removed from any registered premises, an assesse who has availed credit is required to reverse such credit which was not done in this case. The application for including the Premises-II was given much after the removal of the goods from the registered premises during Oct 2005 and only when the matter was pointed out by the departmental officers. Such inclusion was not allowed by the Commissioner. Even if such registration is granted later on, there was a violation of Cenvat Credit Rules as on Oct 2005 and penal consequence will follow. So he argues that the finding of the lower authority is proper.

17. Considered arguments on both sides.

18. We notice that there is an infraction of Rule 3(5) of Cenvat Credit Rules 2004 in as much as capital goods on which credit was

taken has been removed from the registered premises without reversing the credit taken. However, in this infraction we do not find any intention to evade payment of duty, because the Appellant was eligible for taking a combined registration for both the premises and if such combined registration was taken there would have been no infraction of any law. In view of the order passed by us in Appeal No.1687/2008, no short payment of duty subsists as on today. In the circumstances there is no case for demand of duty with penalty under Rule 15 (2) of the Cenvat Credit Rules, equal to duty supposedly evaded.

19. Therefore, the Appeals are allowed by setting aside the duty demand and penalty imposed.

20. The Stay Petition and Appeals are disposed of accordingly.

(Pronounced in open Court)

(Justice R. M. S. Khandeparkar)
President

(Mathew John)
Member (Technical)

RM.