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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/2120/2005-2122/2005 - EX[DB] Date **08/08/2011**

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

To :
M/S PHILCO EXPORTS
11,SSI ESTATE G.T.KARNAL ROAD DELHI
110033

M/S PHILCO EXPORTS Appellant
Vs
C.C.E.NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.704-706 2011 EX[DB]** dated 04-8-11 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.NEW DELHI
C.R.BUILDING I.P.ESTATE NEW
DELHI

110002
2. Adv. / Consult
MR.T R RUSTAGI,ADVOCATE
SD-84, TOWER APARTMENTS, PITAMPURA, DELHI -34

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

Assistant Registrar
(Excise Appeal Branch)

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

Excise Appeal No. 2120 -2122 of 2005

[Arising out of Order-in-Appeal No. 60 to 62 /C E/2005 dated 16.3.2005 passed by the Commissioner of Central Excise (Appeals), New Delhi]

For approval and signature:

Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
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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M/s. Philco Exports Ltd. — Appellants

Vs.

Commissioner of Central Excise
New Delhi — Respondent

Appearance:

Shri T.R. Rustogi, Advocate for the Appellants
Shri I.Baig, SDR for the Respondent

CORAM: Hon'ble Dr. C. Satapathy, Member (Technical)
Hon'ble Mr. M.V. Ravindran, Member (Judicial)

Date of Hearing/decision : 21.7.2011

FINAL ORAL ORDER NO. 704-706/2011-EX

Per M.V. Ravindran (for the Bench):

These three appeals are directed against the common order in appeal No. 60 to 62 /C E/2005 dated 16.3.2005.

2. The relevant facts that arise for consideration are that the appellant herein are manufacturers of table, kitchen and other house-hold articles made of stainless steel and export the entire production under letter of undertakings. The appellant herein availed Cenvat credit of the duty paid on cold rolled SS coils / pipes / strips / SS sheets used in manufacturing of final products. They filed 3 refund claims as per the provisions of Rule 5 of Cenvat credit Rules, 2002. The adjudicating authority after conducting verification and after granting personal hearing, sectioned the refund claims reducing the amount of refund on the basis of standard inputs output norms (SION) fixed by DGFT. The adjudicating authority also reduced the refund claim for the amount of duty that may be involved in the waste and scrap generated in the factory of the appellant during the manufacture of final products. Aggrieved by such part allowance of the refund claim, the appellant preferred appeals before the Commissioner (Appeals). The Commissioner (Appeals) also upheld the order of adjudicating authority and rejected the appeals.

3. Learned Counsel Shri T.R. Rustogi, appearing on behalf of the appellant would draw attention of the Bench to the findings recorded by the learned Commissioner (Appeals). He would also draw attention to

Rule 5 of the Cenvat Credit Rules, and submit that the said Cenvat Credit Rules do not stipulate that the refund claim has to be restricted based on SION norms. As regards the duty adjustment done for the scrap as waste generated, it is his submission that there was no demand nor there is any Show cause notice issued for clearances of waste and scrap so that the appellant could have contested the same.

4. Learned DR reiterates the findings of both lower authorities.

5. We have considered the submissions of both sides and perused the records.

6. The undisputed facts are that the appellants have exported their final products by utilising duty paid inputs on which Cenvat credit was available. It is also not disputed that they are not able to utilise the Cenvat credit availed for home clearance of their final products, if any, of their final products.

7. We find that the learned Commissioner (Appeals) while rejecting the appeals filed by the assessee recorded as under:-

> "6. The first plea of the appellants that the Stainless Steel Scrap are not goods and are not marketable does not have any force as the Stainless Steel Scrap is commercially a distinct product known in the trade parlance and is bought and sold in the normal course of trade. It is mainly used for the manufacture of Stainless Steel by recycling and remelting. In this regard I rely on the judgement of the Hon'ble Supreme Court of India in the matter of Kandelwal Metal and Engineering Works & Anr Vs. Union of India & Ors. 1985 (6) ECC 142 (SC) wherein brass scrap produced during the manufacture of brass goods were considered to be liable to Excise and I therefore hold that the Stainless Steel

Scrap is an excisable commodity. I further find that the letter of the Additional Commissioner of Central Excise, Delhi I seeking clarification on the dutiability of scrap from other Commissionerates has no legal force. Moreover it had no relevance to the appellant's case in view of the fact that the exemption contained in Notification No. 10/2002 dated 1.3.2002 as amended by Notification No. 26/2002 dated 27.4.2002 was applicable only when CENVAT Credit has not been taken on the inputs used in the manufacture of those goods and duty has been paid either in cash or through account current. In the case of appellants they had availed CENVAT Credit and duty payment has not been discharged in cash or through account current. I therefore hold that the adjudicating authority has correctly deducted amount from the refund claim equivalent to the duty payable on the value of Scrap generated during the manufacture of exported finished products and has not been paid by them while clearing the same. Regarding the plea of the appellant regarding non-applicability of IO Norms fixed by the DGFT for arriving at the quantity of inputs used in the manufacture of exported finished goods, the appellant has not submitted any cogent reason why they are not applicable to them. The IO Norms fixed by DGFT are based on the elaborate and comprehensive study of the manufacturing process of the products conducted by the department and are binding on the revenue as well as the trade for availing various benefits ands schemes of the Government extended for Importers and Exporters. I do not find any anomaly in the impugned order for adopting the IO Norms fixed by the DGFT in the absence of any specific IO Norms got fixed by the appellants specifically for their products."

8. It can be seen that provisions of Rule 5 of Cenvat Credit Rules, 2002 was not considered by the learned Commissioner (Appeals) or by the adjudicating authority in the proper perspective, as the said Rule 5

does not contemplate the reduction of the refund claim of an amount of credit availed and lying in the balance and which could not be utilised for home clearance, subject to the conditions that the goods are exported and the appellants follows the procedure laid down. It is not disputed in this cases that the appellants herein had followed the proper procedure for filing of the refund claim. After careful perusal of Rule 5 of Cenvat Credit Rules, 2002, we find that the said Rule does not contemplate about fixing of refund claim of the credit based upon any input /output norms. The SION norms which has been relied upon by both the lower authorities are in different context, that is for import of the goods and said norms were fixed by DGFT which has no relevance, at least, for refund of the amount of Cenvat Credit lying unutilised due to exports.

9. As regards the adjustment of demand of duty on waste and scrap, we find that there is nothing on record to indicate that there was any demand of duty on such waste and scrap in order to reduce the same from refund claim. In absence of any confirmed demand, reduction of said amount from the refund claim is not proper and not in accordance with the law. Revenue may initiate demand of duty on such waste and scrap in accordance with the law if advised so, but reduction from the refund claim of the amount which is yet not quantified in any way, is impermissible.

10. In view of the foregoing, we find that the impugned order is not sustainable and is liable to be set aside and we do so.

11. The impugned order is set aside and the appeals are allowed with consequential relief.

(Dr. C. Satapathy)
Technical Member

(M.V. Ravindran)
Member (Judicial)

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