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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/2210/2005 - EX[DB] Date **24/11/2011**

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

To :
C.C.E.JAIPUR
N.C.R.B.STATUE CIRCLE C-SCHEME JAIPUR
302005

C.C.E.JAIPUR Appellant

Vs

M/S VANSTHALI TEXTILE INDUSTRIES LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.962/ 2011 EX|DB|** dated 22-11-11 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 VANSTHALI TEXTILE INDUSTRIES LTD.
F-3-5,RLLCO INDUSTRIAL AREA
SHAHJANPUR DISTT ALWAR
RAJASTHAN

2. Adv. / Consult
MR.R. KRISHNAN
297-E, POCKET-II, PHASE-I, MAYUR VIHAR DELHI-110091.

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 (Harvana)
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 25.10.2011
Date of Pronouncement : 22-11-2011.

Excise Appeal No. 2210 of 2005

[Arising out of Order-in-Appeal No. 103 (MPM)CE/JPR-I/2005 dated 12.4.2005 passed by the Commissioner (Appeals), Central Excise, Jaipur)

Coram:
Hon'ble Shri D.N. Panda, Member (Judicial)
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

CCE, Jaipur — Appellant

Vs.

M/s Vansthali Textile Industries Ltd. — Respondent

Appearance:
Appeared for Appellant : Shri I, Baig, DR
Appeared for Respondent: Shri R. Krishnan, Advocate

CORAM: Hon'ble Shri D.N. Panda, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. 962/2011-EX.........dated............

Per Mathew John:

The Respondents are working as 100% Export Oriented Undertaking engaged in the manufacture of terry towels. They obtained furnace oil without payment of excise duty claiming the benefit of

Notification No. 1/95-CE dated 4.1.95. The operative part of the notification is reproduced below :-

"In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods, specified in Annexure-I to this notification (hereinafter referred to as the said goods), when brought in connection with -

(a) the manufacture and packaging of articles into a hundred percent export oriented undertaking (hereinafter referred to as user industry); or

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ANNEXURE I

1. Capital goods and spares thereof.
2. Material handling equipments, namely, fork lifts, over-head cranes, mobile cranes, crawler cranes, hoists and stackers and spares thereof.
3. Captive power plants, including captive generating sets and their spares, fuel, lubricants and other consumables for such plants and generating sets as recommended by the said Board or the said Committee, as the case may be.
4. Office equipments, spares and consumables thereof as recommended by the said Board or the said Committee, as the case may be.
5. Raw Materials.
6. Components.
7. Consumables.
8. Packaging materials.
9. Tools, jigs, gauges, fixtures, moulds, dies, instruments and accessories and spares thereof.
10. Prototypes, technical and trade samples for development and diversification.

11. Drawing, blue prints and charts."

2. Furnace oil was procured by the Respondents for producing steam which in turn was used in the manufacturing process of terry towels. Revenue was of the view that furnace oil will not fall under any of the 11 items specified in Annexure-I to the notification as reproduced above and the Respondents were not eligible for the said exemption to procure furnace oil without payment of excise duty. Based on such argument, a Show Cause Notice was issued to the Respondents demanding excise duty amounting to Rs.12,05,504/- on furnace oil obtained by them from the manufacturers against CT-3 certificates issued by Central Excise officers on the basis of undertaking given by the Respondents. The Show Cause Notice was adjudicated confirming duty amount of Rs.12,05,504/-. Further, a penalty of Rs.3.00 was imposed on the Respondents under Rule 173 Q of Central Excise Rules 1944/ Rule 25 of Central Excise Rules 2001. The demand was in respect of furnace oil obtained during the period 25.9.97 to 14.9.98. The Respondents filed an appeal with the Commissioner (Appeals) who held that the furnace oil is of the nature of consumables and therefore the Respondents were eligible for the benefit of the said exemption notification. Aggrieved by the order of the Commissioner (Appeals), Revenue has filed this Appeal.

3. Ld. AR (Commissioner) appearing for Revenue argued that the Commissioner (Appeals) has not discussed the meaning of "raw material" or "consumables" and without considering the exact meaning

of these words have agreed with the contention that furnace oil falls within the meaning of "consumables". He argues that only materials which get consumed in the process of manufacture of the final products can be considered as consumables. According to him Furnace Oil, in the impugned case, is not getting consumed for manufacture of the goods viz. terry towels for the manufacture of which 100% EOU is registered.

3. He also points out that fuel is covered in item 3 of Annexure-I where it is covered along with spares and lubricants needed for captive power plants. Since the Respondents did not have any captive power plant this provision would not apply to the Respondents. He further points out that the notification was amended by Notification No. 31/98-CE dated 15.9.98 to add new entries viz. 3B and 3C in Annexure-I to Notification 1/95-CE. The said entries read as under:

> "3B fuel, lubricants and consumables for goods specified at items 3 and 3A, as approved by the Commissioner of Customs on the recommendation of the Development Commissioner.
>
> 3C Furnace oil required for the boilers used in the textile units as approved by the Commissioner of Customs on the recommendation of the Development Commissioner."

4. The argument of the A.R. thus is that the furnace oil needed for producing steam was brought under the scope of the exemption under Notification No. 1/95-CE only with effect from 15.9.98 and the demand relates to the period prior to this amendment.

5. The A.R. also pointed out that this is a case where the Respondents have obtained material giving an undertaking to account the goods as per the provisions in notification and when the goods have not been used as specified in the notification, there cannot be time-bar for raising the demand. The argument of the Respondents that they filed returns with the department cannot absolve the liability arising as per the undertaking given. For the above reasons, the A.R. prayed for restoration of the order-in-original.

6. The Counsel for the Respondents submits that the exemption under Notification No. 1/95-CE is for excisable goods specified in Annexure-I to the notification when brought in connection with the manufacture and packaging of articles in a 100% Export Orient Undertaking. There can be no doubt that these goods were brought into the factory and it was brought in connection with manufacture of excisable goods. Thus furnace oil was covered within the scope of the notification as contained in the main clause of the notification. The only issue raised by Revenue is that this would not fall within the meaning of "consumables" specified in Annexure-I to the notification till amendment as carried out vide Notification No. 31/98-CE came into force. He states that the amendment no doubt clearly brings furnace oil used in boilers by textile units within the scope of the original notification. But that cannot be a reason to infer that such goods were not covered prior to such amendment. His contention is that furnace oil

was covered within the meaning of consumables. He relies on Board's Circular 21/97-Cus dated 24-06-97 clarifying that EOUs can obtain Furnace Oil without payment of customs duties. He also relies on the following decisions :-

(i) **Jayant Agro Organics Ltd Vs. CCE**-2003 (157) ELT 684 (Tri) as affirmed by Supreme Court as reported at 2009 (238) ELT A24 (SC);

(ii) **Vanasthali Textile Industries Vs. CCE**-2007 (218) ELT 3 (SC).

7. Further, he argues that the Show Cause Notice was issued on the ground that the furnace oil obtained was not properly accounted as required under Rule 196 of the Central Excise Rules, 1944. The Respondents have fully accounted for the entire quantity of furnace oil obtained as used in boilers in connection with their manufacturing activity and submitted returns to the department. The contention now raised is not about accounting but is on the issue that the goods itself was not covered by the notification and the CT-3 certificates issued with the concurrence of the Central Excise officer, were not valid. This being an issue involving interpretation of law extended period of time for making the demand cannot be invoked. His contention is that any demand under the Central Excise Rules can be issued only subject to the provisions of Section 11A which lays down the time limits for issuing demand where there is a short-levy.

8. We have considered arguments on both sides. The argument on part of the Revenue is that furnace oil is not a "consumable" going by

ordinary meaning of the word or the definition of the word as given in the Import Export Policy. His argument is that furnace oil is not consumed in the manufacture of terry towels because no part of the furnace oil forms part of the product manufactured. We are not able to agree with this argument. Steam was required for manufacture of terry towels and furnace oil obtained was used for producing steam and steam was consumed in manufacture of terry towels. That being the situation, the meaning given by the Commissioner (Appeals) to the word "consumable" is only a proper interpretation. In fact this matter is no longer res integra and is already settled by the Apex Court in the appellants own case (supra) and the case of **Jayant Agro Organics Ltd** (Supra). So we do not see any merit in the argument of the appeal filed by Revenue and there is no need to examine the issue of time bar. So the appeal is dismissed.

(Pronounced in Court on....22.11.2011..)

(D.N. Panda)
Member (Judicial)

(Mathew John)
Member (Technical)

RM