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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/4399/2004 - EX[DB] WITH E/CO/417/2004 Date **13/01/2012**

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

To :
M/S PUNJAB COMMUNICATIONS LTD.
B-91, PHASE-VII, INDL. AREA, SAS NAGAR,
CHANDIGARH
160059

M/S PUNJAB COMMUNICATIONS LTD. Appellant

Vs

C.C.E. CHANDIGARH Respondent

I am directed to transmit herewith a certified copy of **Final order No.A/22/ 2012 EX[DB]** dated 12-1-12 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
PLOT NO 19, SEC 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-3
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 17.11.2011
Date of Pronouncement : 12-1-12

Excise Appeal No. 4399 of 2004 with CO/417/2004

[Arising out of Order-in-Original No. 28/CE/2004 dated 28.2.2004 passed by the Commissioner of Central Excise, Chandigarh]

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Technical Member

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?	Yes

M/s Punjab Communications Ltd. Appellant

Vs.

CCE, Chandigarh Respondent

Appearance:

Appeared for Appellant : Shri Ravi Raghvan, Advocate
Appeared for Respondent : Shri Sunil Kumar, DR

Coram:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL Order No. A/22/2012-EX(BR) dated............

Per **Mathew John:**

The Appellants are an undertaking of Punjab State Government. They are engaged in the manufacture of Telecommunication equipment falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act. They were making such equipment for the Department of Telecommunication, Ministry of Defense, Indian Railways etc. They were taking Cenvat credit of excise duty on inputs used by them

2. On scrutiny of their Annual Financial Statements Revenue found that during the period April 94 to March 97, the appellants had shown issue of material worth Rs. 3,51,02,448/- to their "Research and Development" (R&D) Section. Revenue was of the view that use of inputs in R&D did not result in manufacture of dutiable final products and therefore they were not eligible for Cenvat Credit on such inputs used in R&D. Revenue issued a Show Cause Notice dated 10-03-99, demanding reversal of Cenvat Credit on such inputs and proposing penalty under Cenvat Credit Rules. The Notice was adjudicated by order dated 18-02-2000 confirming the duty demand of Rs. 64,49,849/- with interest as also penalties. Aggrieved by the order the Appellants filed an Appeal with the Tribunal. The Tribunal vide order dated 5-12-2001 remanded the matter to the adjudicating authority with the following directions.

> "We have considered the submissions of both the sides. We observe that the question to be decided in the present appeal is whether the inputs, which were shown to have been consumed in R&D section, were in fact used in the manufacture of finished products and which were cleared on payment of duty. The Ld. Advocate for the Appellants have attempted to

show us by referring to various document and registers that the inputs received in the factory in respect of which modvat credit was availed of by them have been in fact utilized in the manufacture of the equipment's which were subsequently supplied to DOT. We also observe that the adjudicating authority did not look into this aspect though the coorelation was submitted to the Commissioner on the ground that the statutory Tax Audit Report clearly mentioned that it was not possible to calculate the yield on account of very large numbers of component. We find substance in the submissions of the ld. Advocate that the number of equipments could not have been manufactured by them without the use of the inputs which had allegedly gone for use in R&D Section. We are of the view that the Adjudicating Authority has to look into the aspect by referring to all the documents and determine whether the inputs in question were in fact used in or in relation to the manufacture of finished product which were cleared on payment of duty though these were shown in the records to have been used in R&D Section. Further, it is also to be ascertained what type of research and development work was being taken by the appellants in order to arrive at a conclusion as to whether inputs used in R&D Section can be regarded as inputs used in or in relation to the manufacture of the final products. We, therefore, remand this matter to the Adjudicating Authority with the direction to look into the submissions made by the appellants that the inputs have gone, in fact, in the manufacture of the equipment only. The appellants will produce within two months from the date of receipt of this Order the detailed submissions co-relating the inputs to the manufacture and removal of the final products and submit to the Adjudicating Authority who will take into consideration the same before deciding the matter afresh. At this stage, Ld. Advocate for the appellants submitted that they could correlate the use of inputs which are of high value and not in respect of 100% inputs such as small items like screws, etc. We may only mention that the adjudicating authority may consider this plea of the appellants also while deciding the matter afresh. The appeal is thus allowed by way of remand."

3. The Ld. adjudicating authority has re-adjudicated the case vide her order dated 28-02-2004 re-confirming the duty demand of Rs. 64,69,849/- along with interest as applicable under Rule 57 I (5) of Central Excise Rules read with section 11AA of the Central Excise Act. Further penalty of Rs. 64,49,849/- is imposed under Rule 57I (4), read with Rule 173Q and rule 226 of CER, 1944. Aggrieved by the order the Appellants have filed this appeal.

4. One of the arguments raised in the present appeal is that inputs used for testing, quality control, trial production are indeed used in relation to the manufacture of final products even though some of the inputs may get destroyed in such process and may not actually be present in the final product finally cleared. The Appellants rely on the following decisions in support of this argument.

(i) Tata Engineering & Locomotive Co. Ltd. Vs. CCE – 2010 (256) ELT 56 (Bom.)
(ii) Sudarshan Chemical Inds. Ltd. Vs. CCE – 2010 (100) RLTONLINE 295.
(iii) Reva Electric Car Com (P) Ltd. Vs. CCE – 2010 (250) ELT 149
(iv) Tetra Pak India Pvt. Ltd. Vs. CCE – 2010 (252) ELT 283.
(v) CCE Vs. Duracell (India) Pvt. Ltd. – 2001 (137) ELT 882.

5. Actually this argument might have been good enough to decide the appeal in favor of the appellants. However the appellants have been giving another argument in earlier round of litigation and are

arguing that point even now because they feel that argument is also equally strong and would clinch the issue. This argument is that the so called R &D was nothing but initial production of certain final products adopting technology procured from abroad. The appellants submit that they were procuring technology from others and were not doing any original R&D. During the initial phase of production, the production was supervised by specially trained engineers and the products were accounted under the head of Research and Development. They argue that this activity was in fact Product Engineering and they have started calling the R&D Division by the name of Product Engineering Division. (Revenue is seeing this change of name as "an attempt to willfully hoodwink the department" as seen from para 20 of the impugned order). Once they were sure of the quality of the final product, such products were produced in mass scale in the normal assembly line. The products manufactured in the initial phase also were sold on payment of duty. If the name of their R& D Division was creating a confusion in the mind of the excise authorities, we do not consider it surprising that they thought it fit to change the name of the section to Product Development Division which was more appropriately reflecting the activities of the division.

6. They have been further submitting that they can demonstrate the use of all major components which were issued to R& D personnel and show that the duty on the final products that emerged in such

activity was paid. As may be seen from the order dated 05-12-2001 of the Tribunal, the matter was remanded back basically to verify this contention.

7. On overall appreciation of facts, the case of Revenue is that the appellants have not been able to prove that final products manufactured in the process of so-called "R &D" was cleared on payment of duty. The weakness in Revenue's case is that they have not been able to prove any clandestine removal of inputs or final products. The case of revenue appears to be that the inputs were destroyed in the process of R&D, though such a direct statement is not seen in the impugned order. Basically this is a demand based on entries in account books of the appellant. However the explanation for the entries given by the appellant that "R &D" meant only a special stage of manufacture, that is the initial trial and error period is not being accepted by Revenue.

8. Since the appellants had made a claim in the First round of litigation that all the final products made in R& D division were cleared on payment of duty Tribunal had remitted the matter for verification of this claim. For this the Appellant had given a list of 13 unique inputs (that is products unlike items like resistors, capacitors etc which are used in all their products) having value of Rs. 14671738 and involving duty element of Rs. 3345228 and accounted that final products

corresponding to those unique products have been cleared on payment of duty.

9. The finding in this matter is seen in paras 30 to 34 of the impugned order which are re-produced below:

> "30 "Therefore, as per the directions of the Hon'ble Tribunal the Preventive staff of this office visited the factory premises of the Noticee twice to carry out the verification of the relevant record as directed by the Hon'ble CEGAT. The notice with reference to the visit of their factory in the month of May, 2003, addressed a letter to the Commissioner of Central excise vide their letter No. PMT-F-4.37514 dated 13.5.2003. Gist of this letter is as under:-
>
> "that Puncom has never had any separate R&D Department. As brought out in our reply to the SCN and also in our appeal, the company has never indulged into any basic R&D. In fact, the company used to acquire technology from the technology holders. Then, some of the selected Engineers from various departments were sent to these technology setups to understand the systems. Since, these technology holders used to provide technology for standard equipment, company needed to do slight modifications in the system to meet the specifications of Indian Customers. Thus, any such change in specification was being handled by the set of these trained engineers and the pilot production used to be carried out under their guidance and named so called R&D. Thereafter the equipment were (after change as per specifications / pilot production) cleared under cover of invoice on payment of Excise Duty".
>
> 31. The Noticee in their above referred letter have denied having undertaken any R&D work. They stated that the company used to acquire technology from the technology holders and then some of the selected Engineers from various departments were sent to these technology setups to understand the

systems. The Noticee further stated that the technology holders would provide technology for standard equipments as the company needed to do slight modifications in the system to meet the specifications of Indian Customers and that any such change in specification was being handled by a set of such trained Engineers. That the initial production carried out under their guidance was booked under R&D and equipment (after change as per specifications/ pilot production) were cleared under the cover of invoice on payment of Excise Duty. The Preventive staff of Hqrs. Office visited the factory of the notice on 10.2.2004 and conducted enquiries with regard to the directions given by the Hon'ble CEGAT. After verifying the relevant records maintained by the notice it was observed by the visiting officers that:-

i) The noticee recorded the receipt of raw materials in the RG23-1 but no issue of the same was shown for R&D. The private computerized record of the issue of inputs for R&D was found to have been maintained but the notice did not maintain any record, private or otherwise showing the receipt of the inputs back from the R&D section and further issuance thereof for production of excisable goods.

ii) Regarding the R&D Section, the notice informed that at present they do not have any R&D Section as the same was stopped in 199798, as they had suffered heavy losses and that most of the staff associated with the R&D work either has retired or opted for the VRS or left the service for better opportunity elsewhere and as such the notice was not in a position to explain as to what type of R&D work was being done in the factory.

iii) As regards the noticee's contention that they can correlate the use of inputs of high value, it was found that they have not kept any separate record of the R&D work or the nature of R&D work or the goods manufactured in the R&D and its subsequent use in the manufacture of final product. The noticee had maintained private records showing the movement of inputs issued to the R&D section but no record are maintained showing the return of the inputs from the R&D section and its subsequent use in the manufacture of final products.

iv) That the plea of the party that inputs issued to R&D were used in the manufacture of finished goods which were finally cleared on payment of duty is not proved by records.

v) That after issue of inputs to R&D section there is no record of their movement and we come to a dead end. The logical conclusion, therefore, is that such inputs got consumed in the R&D work and never came back to production stream.

32. Thus, as per the direction of the Hon'ble CEGAT as mentioned in the foregoing paragraphs, the staff of this office visited the factory premises of the noticee twice to verify the contention made by the noticee in their defence. The noticee in their written submissions has denied having done any R&D work in their factory and that no R&D section has ever existed and that no separate record was available with them. The record of the case as well as spot verification of the record maintained by the noticee in their factory was revealed that the noticee though recorded the receipt of raw materials in the RG23-1 register but not shown as issued for R&D section. It was however noticed that private computerized record of the notice show entry of the inputs issued to the R&D section and at the same time it was found that they have not maintained any record private or otherwise showing the receipt of inputs back from the R&D section and further issuance thereof for production of excisable goods. Hence, it is not possible for the department to correlate as to whether the final products manufactured and cleared by the noticee on payment of duty had actually been manufactured out of inputs initially issued in the R&D section and received back subsequently.

33. As regards the existence of R&D section, the noticee has informed that at present they do not have any R&D section as the same was stopped in 1997-98, as they are reported to have suffered heavy losses.

They further informed that most of the staff associated with the R&D work either has retired or opted for the VRS or left the service for better opportunities elsewhere and that they were not in a position to explain as to what type of R&D work was being done in the factory. In view of these submissions of the noticee it is not possible to trace the movement of raw material issued for R&D and its subsequent receipt in the store and further issuance of the same for the manufacture of final goods. Regarding the noticee's contention that they are able to correlate the use of inputs of high value I observe that the noticee has not kept any separate record of the R&D work or the nature of R&D or the goods manufactured in the R&D and its subsequent use in the manufacture of final product. The noticee had maintained only private records showing the movement of inputs issued to the R&D section but there is no such record which show the return of the inputs from the R&D section and its subsequent use in the manufacture of the final products. Thus, in the absence of any records it is not possible for the department to say as to what type of R&D work has been done by the noticee. The only document is the balance sheet in which noticee has shown such activity of R&D. The noticee, in their letter dated 13.5.2003, has admitted that the technology holders used to provide technology for standard equipment and technology holders used to provide technology for standard equipment and company needed to do slight modification in the system to meet the specifications of Indian customers and that such change in specification was being handled by a set of Engineers and the pilot production used to be carried out under their guidance and named as R&D. This specific admission of the noticee make it absolutely clear without any doubt that the noticee has definitely carried R&D work in their factory by using the duty paid inputs knowing that on such inputs modvat is not admissible under the modvat scheme.

34. From the above discussions and findings I come to the following conclusion:-

(i) That the noticee for the present is not doing any R&D work not they have maintained any record of R&D work done by them in the past. The noticee can correlate the inputs upto the issue stage but have no system to identify whether inputs in question have been used in the R&D work or manufacture of goods cleared on payment of duty. Thus, in view of above discussions, it is not possible to comment upon the nature of the R&D work as directed by the Hon'ble CEGAT.

(ii) There is no record regarding the goods manufactured in the R&D to prove that duty on the same has been paid. The documents submitted by the noticee does not show any correlation between the inputs and the goods cleared on payment of duty".

10. Thus it can be seen that the argument is that there is no records maintained to show that the impugned inputs issued to R&D had come back. In fact the argument of the appellant is that the goods issued to R&D have gone out as finished goods on payment of duty. There is no effort to verify this contention. The unique parts taken for demonstration of duty paid clearance of final products was inputs used by R &D section for manufacture of VSAT Communication equipment. What was required to be verified was whether the VSAT Communication equipments were cleared on payment of duty. It is quite evident that the department has no expertise to verify the accounts maintained by the appellant and give a conclusive finding on the contention that the impugned inputs were used in manufacture of final products and were cleared. The matter had been already remanded once with no improved results on re-adjudication. This is a matter relating to the period 1994 to 1997. The matter is stated by a

Government Company. So we do not consider that it will be fruitful to remand the matter again for any verification. So we accept the claim of the Appellants.

11. We take note of the following facts:

(a) The genesis of the case is the name of a Division of the Company as "Research and Development Division" and Revenue's view that inputs used in Research and Development are not eligible for Cenvat credit. Both these are not good enough for confirming the impugned demand. Demand can arise only in a situation where the inputs are cleared as such after taking credit or if the inputs are not used in relation to manufacture of dutiable final products. The expression "used in relation to" does not meant that the inputs should find a place in the final products cleared on payment of duty. Since this issue is well argued and decided in many cases we do not consider it necessary to write a discourse on this issue in this case.

(b) The entire case of Revenue is just based on material consumption shown in Schedule 19 of the Annual Financial Statements. The appellants have explained that the entry in this schedule shows material consumed in specialized production process and is on identical footing as that in Schedule 17 (showing consumption of raw material for normal manufacturing process involving mass production), as far as manufacture of final product is concerned. The submission that materials in both the schedules resulted in manufacture of final products which were cleared on payment of duty is not rebutted adequately in the impugned order but there is only an argument that there are no records showing return of inputs issued for R& D. We note that if the appellants' claim is correct there would not have been any return of such inputs. Further looking for documents to establish correlation of each input issued with final product cleared is impossible in the case of a factory like that of the appellants using thousands of small input items. It is reasonably clear that the case emanates from hazy understanding of the Annual Financial Statements coupled with a lack of willingness to take the understanding forward based on the explanation given by the appellant.

(c) The argument is that schedule 19 shows inputs issued for "R & D". So the revenue is presuming that such inputs did not result in manufacture of final products. On the contrary the appellants submit that such material also resulted in final products cleared on payment of duty which they have demonstrated by taking the examples of 13 main components. There is no finding to the effect that no such final products have been cleared from the factory. There is only a finding to the effect that there is no record to show its receipt back to the production line. The contention of the appellants has all along been that the inputs were used in the same shop floor but under supervision of specially trained manpower and the inputs have moved forward to final products cleared on payment of duty.

(d) Revenue has not made out any case that the inputs were cleared without payment of duty or they were destroyed in the process of so called R&D;

(e) The decisions quoted in para 4 above are to the effect that inputs used in trial productions or destructive testing or trial production also are eligible for Cenvat credit. Decisions in the case of Telco(Supra) and Tetra Pak India (Pvt) Ltd are particularly relevant.

12. So we do not find any merit in the case of the Revenue that the appellants are not eligible for Cenvat credit on the impugned inputs.

13. So the appeal is allowed by setting aside the impugned order. The cross objection filed by Revenue also is disposed of accordingly.

Pronounced on 12-01-12

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM