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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

Date **02/04/2012**

Appeal No. E/1833/2005 - EX[DB]

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

To :
M/S RAY BAN SUN OPTICS INDIA LTD
SP-810-811 ROAD NO-20,RIICO IND.AREA PHASE-II,
BHIWADI RAJASTHAN

M/S RAY BAN SUN OPTICS INDIA LTD Appellant

Vs

C.C.E. JAIPUR II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** A/380/ **2012 EX[DB]** dated 30-3-12 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. JAIPUR II
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

E/Appeal No.1833/2005

(Arising out of order in appeal No.17/MPM/CE/JPR-1/2005 dated 1.3.2005 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur)

Date of Hearing: 21.2.2012
Date of Pronouncement:

For Approval and signature:

Hon'ble Mrs. Archana Wadhwa, Member Judicial
Hon'ble Mr.Mathew John, Technical Member

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 would 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 Department Authorities?	Yes

M/s Ray Ban Sun Optics India Ltd — Appellants

Vs

CCE, Jaipur — Respondent

Appeared for the Appellant: Shri Amit Jain, Advocate
Appeared for the Respondent: ShriSunil Kumar, AR

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

FINAL ORDER No.A380/2012-EX (BR)

Per Archana Wadhwa:

After hearing both the sides, we find that the appellants are engaged in the manufacture of Sunglasses and Spectacle frames falling under Chapter 90 of the Schedule to the Central Excise Tariff

Act, 1985. They were availing the benefit of Modvat/Cenvat credit on various inputs.

2. During scrutiny of their balance sheet for the year 2000-01, it was found that the inputs totally valued at Rs. 1,05,60,430/- were shown as written off. As the appellants had not reversed the cenvat credit on the inputs so shown as written off in their balance sheet, Revenue entertained a view that credit reversal was required. The statement of Shri Kunal Bose , Senior Manager Finance was recorded on 18.10.2002 deposing that during the financial year 2000-01, they undertook the exercise of identifying the slow moving/obsolete raw material, intermediate components for sunglasses and frames which had gone out of fashion or were going out of fashion; that the value of raw material and intermediate components so identified was Rs. 1,05,60,430/- based on weight average method of valuation; that in their books they had written off the said value. He further stated that the said value was written off to reflect the inventory at cost or net realizable value which ever was less and that the said raw material, intermediate components if not used for manufacturing sunglasses/frames would only have had scrap value and hence for inventory valuation they had considered the same at nil value.

3. By entertaining a view that as the said inputs have not been used in the manufacture of final product, Modavat/Cenvat was not admissible thereon, a show cause notice was issued to the appellant on 18.5.2004 for recovery of cenvat credit in respect the above inputs. The show cause notice culminated into an order passed by the Original Adjudicating Authority confirming recovery of Rs. 16,89,669/- along

with confirmation of demand and imposition of identical amount of penalty. The appeal against the above order did not succeed before the Commissioner (Appeals). Hence the present appeal.

4. It is seen that right from the beginning, the appellant's contention is that the input in question are still in their possession and they have not cleared the same. Merely because the inputs were written off in their balance sheet, cannot be made the basis for denial of the credit. For the above proposition, they placed reliance on various decisions of the Tribunal.

5. The above plea taken by the appellant does not stand rebutted by the lower authority. By relying upon the Board's Circular No. 101/12/95-CX dated 22.9.1995 and Board Circular No.645/36/2002-CX dated 16.7.2002, the lower authorities held that the credit availed by the appellants on the inputs written off is appropriate. The above contention that even the said Board circular referred above is to the effect that where the inputs had not been removed from the factory and were lying there, the credit was not required to be reversed, was not found favour by the lower authority.

6. It is seen that the Commissioner (Appeals) has referred to the notes of the accounts in the annual return of the company and the Auditor report read with the Director's report and has held that as per the policy decision of the management of the appellant company to write off obsolete machinery and inventory due to technological upgradation; inventory obsolescence resulting from rationalization of the product range, loss was taken to the profit and loss account and balance sheet of the appellant. He has recorded that it was a complete

written off of inputs and as such, irrespective of the fact that the same were still lying in their stock account and were available for use, the credit reversal is to be done.

7. After hearing both the sides, we find that it is not Revenue's case that the inputs were cleared from the factory. Merely because the same were written off in the books of account and the value shown as nil, by itself, cannot be considered to amounting to removal of the inputs from the factory premises in the absence of any evidence to that effect. Law on the above issue stands settled by various decisions of the Tribunal as detailed below:-

CCE Indore Vs. Kinetic Motors Co Ltd
2005 (183) ELT 300 (Tri.-Del)

Ashok Leyland Vs. CCE, Chennai
2005 (191) ELT 277 (Tri.Chennai)

Kirloskar Oil Engines Ltd Vs. CCE Nasik
2004 (178) ELT 998 (Tri.-Mum)

Tecumseh Products India Pvt Ltd Vs CCE Hyderabad
2008 (221) ELT 129 (Tri Bang)

Bharat Heavy Electricals Ltd Vs CCE Bangalore
2002 (50) RLT 208 (CESTAT-Ban)

Ultratech Cement Co Ltd Vs. CCE Surat
2009 (247) ELT 771 (Tri Ahmd)

CCE Vapi Vs Schwabe Incoats
2009 (242) ELT 247 (Tri Ahmd)

BHPV Ltd Vs CCE Visakhapatnam
2009 (240) ELT 49 (Tri Bang)

CCE Vs Indian Petrochemicals Corp Ltd
2008 (226) ELT 339 (Bom)

Phillips Electronics India Ltd Vs CCE Pune
2011 (274) ELT 311 9Tri Mum)

8. The ratio of the above decisions is that merely writing off inputs in the financial accounts on account of the same being obsolete inputs does not require cenvat credit reversal, when the goods were still lying in the factory premises. In as much as the issue stands decided by catena of decisions referred supra, we do not find any reason to take a different view.

9. At this stage, we may refer to Tribunal's decision in the case of Biotech Synergy Ltd Vs CCE Indore 2011 (271) ELT 273 (Tri Del) relied upon by the learned DR. We find that the facts of the above judgements are different from the facts in the present case in as much as there was finding of fact in the above referred decision that inputs on which credit was availed had become unusable on expiry of the time period. In the instant case, however, it is the appellant contention that the spectacle frames and the other inputs did not stand utilized by them as they had gone out of fashion. However, in as much as they were in the factory premises and in the possession of the appellant, they were capable of being utilized in future. As such, we hold that the Tribunal's decision in the case of Biotech Synergy does not apply to the facts in the instant case.

10. As regards the Tribunal's decision in the case of RPG Cables 2003 (157) ELT 273 (Tri Del) relied upon by the learned DR, we find from para 8 of the said judgment that there was a finding of fact given by the authorities below that the inputs were not physically available even after being written off from the account nor there was any evidence that the same were used in the manufacture of final product.

11. In the instant case, we find that the appellants have taken a categorical stand that the inputs were still in their possession. Revenue has not rebutted the above submission of the appellant and there is no allegation or finding that the inputs stand cleared from the factory. In such a scenario, ratio of law in the various decisions of the Tribunal referred supra would apply. As such, by following the same, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)

P.T.O

12. I have gone through the order recorded by Ld. Member (Judicial). While I agree with the operative part of the order, I find it necessary to make some observations. So I am recording this separate order.

13. This matter relates to inputs written off during the year 2000-01. Show Cause Notice is issued on 18-05-2004, and adjudicated on 25-10-2004.

14. Cenvat Credit Rules 2004 were amended on 16-05-2005 to add a new sub-rule (5B) in Rule 3 reading as under:

> *"(5B) If the value of any,*
> *(i) input, or*
> *(ii) capital goods before being put to use,*
> *on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :*
> *Provided that if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules."*

15. The question whether this new provision will apply for inputs written off prior to 16-05-2005 was examined by the Mumbai High Court in the case of CCE Vs. Hindalco Industries Ltd 2011 (272) E.L.T. 161 (Bom.) and held that the provisions cannot be invoked in such a situation. Since the period involved in this case also is prior to 16-05-2005, I agree with the order recorded by Ld. Member (Judicial).

(Mathew John)
Member(Technical)

(Order pronounced on 30/3/14)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)