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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/2743/2011 - EX[DB]
E/S/3557/2011-EX

Date 10/04/2012

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

To :
M/S ARVIND INTERNATIONAL LTD(UNIT-II)
E-225, RIICO INDUSTRIAL AREA, BAGRU,
JAIPUR(RAJ)

M/S ARVIND INTERNATIONAL LTD(UNIT-II) Appellant
Vs
C.C.E. JAIPUR I Respondent

STAY ORDER NO. 608/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/425/ 2012 EX[DB]** dated 03-4-12 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 I
N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.
2. Adv. / Consult SH. JATIN MAHAJAN, ADV.,
157, THIRD FLOOR, VINOBHAPURI,
LAJPAT NAGAR-II, N. DELHI-24
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

10/4/12
Assistant Registrar
(Excise Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.
Court No. 1

Date of hearing/decision: 03.04.2012

Hon'ble Sh. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Excise Appeal No. 2743 of 2011 with Excise Stay No. 3557 of 2011
(Arising out of order in appeal No.253 (DKV)CE/JPR-I/2011 dated 29.09.2011 passed by the Commissioner (Appeals) Central Excise, Jaipur).

M/s Arvind International Ltd.(Unit-II) Appellants

Vs.

CCE, Jaipur Respondent

Present Shri Jatin Mahajan, Advocate for the appellant.
Present Shri Nagesh Pathak, AR for the respondent.

Coram: Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Sh. Rakesh Kumar, Member (Technical)
STAY ORAL ORDER No 608/2012-EX(BR)
FINAL ORAL ORDER NO. A/425/2012-EX(BR)

Per: Rakesh Kumar:

The appellant are manufacturing PU Rebonded Foam Sheets & mattresses chargeable to central excise duty. On 12.05.2008, there was a fire accident in their factory in which among other goods, certain quantity of inputs in process involving duty of Rs. 15,66,597/- were destroyed. The Department sought recovery of cenvat credit on the inputs in process destroyed in fire and after issue of show cause notice, the jurisdictional Additional Commissioner vide order-in-original dated 23.03.2011 confirmed of the cenvat credit demand of Rs.15,66,597/- alongwith interest and imposed penalty of equal amount on the appellant. On appeal to Commissioner (Appeals), the order of the Additional Commissioner was upheld in toto vide order in appeal dated 26.09.2011. Against the order of the Commissioner (Appeals), this appeal alongwith stay application has been filed.

2. Though, this matter was listed for hearing of the stay application only, after hearing both sides, we are of the view that the matter involve a short issue, the appeal itself can be taken up for final disposal. Accordingly, with the consent of both the sides, the matter was heard for final disposal after waiving the requirement of pre-deposit.

3. Sh. Jatin Mahajan, Advocate, the ld. Counsel for the appellant pleaded that the cenvat credit, in question, which is sought to be recovered has been availed in respect of inputs which were in process when the fire accident took place and the inputs were totally destroyed; that the insurance claim received by them in respect of inputs in process does not include the element of central excise duty; that this is clear from the certificate dated 03.03.2011 issued by the National Insurance Company Ltd. which settled their insurance claim; that in terms of the judgement of the Tribunal in the case of **CCE, Chennai-III vs. Indchem Electronics – 2003 (151) ELT 393 (Tri. Chennai)** no cenvat credit is required to be reversed in respect of the

inputs in process ~~ex~~ destroyed in fire accident; that the SLP No. 2877/2003 filed by the Department against this judgement of the Tribunal has been dismissed by the Apex Court vide judgement reported in -**2003 (157) ELT A206 (SC)** and that in view of this, the impugned order is not correct.

5. Sh. Nagesh Pathak, Ld. AR defended the impugned order relying upon the Board's Circular No. 907/27/09-CX dated 07.09.2009, relevant portion of which is reproduced below:-

> "2. The matter has been examined. Rule 3(5B) of the CENVAT Credit Rules, 2004, provides that if the value of any input on which cenvat credit has been taken is written off fully in the books of accounts, then the manufacturer is required to reverse the credit taken on the said input. As far as finished goods are concerned, it is stated that excise duty is chargeable on the activity of manufacture of product. Even though liability for payment of tax has been postponed to the time of removal of goods for the factory, but still the legal liability to pay the excise duty has been fastened on the goods, when it has been manufactured or produced. Therefore, normally all goods manufactured suffer excise duty at the time of removal, but if the manufactured goods are destroyed due to natural causes etc., Rule 21 of Central Excise Rules, 2002, provides for remission of duty. Further, Rule 3(5C) of CENVAT Credit Rules, 2004, also requires reversal of credit on the inputs when the duty is ordered to be remitted under the said Rule 21. Therefore, if the goods have been manufactured, in that case, a manufacturer is liable to pay excise duty unless duty is remitted under Rule 21. Therefore, if the value of finished goods is written off, the manufacturer would be liable to pay excise duty or he would be reverse the credit on the inputs used, if duty has been remitted on finished goods.
>
> 3. As regards writing off work in progress (WIP), it is stated that if the WIP has reached the stage, when it can be considered as manufactured goods, in that case, the same treatment as applicable to finished goods, discussed in para 2 above would apply. However, if the activity carried out on the WIP goods cannot be considered as amounting to manufacture, in that case, the said goods should be considered as input and the treatment for reversal of credit applicable to input would be applicable".

6. We have carefully considered the submissions from both the sides and perused the record. There is no dispute about the fact that the insurance claim received by the appellant in respect of loss of the work in process inputs does not include the element of central excise duty. We find that the issue regarding admissibility of cenvat credit in respect of the inputs in process destroyed in fire is squarely covered by the judgement of the Tribunal in the case of **CCE, Chennai-III vs. Indchem Electronics** (supra) the SLP against which has been dismissed by the Apex Court. In view of this, the board's circular being contrary to the decision of the Tribunal, does not help the Department.

7. The impugned order is, therefore, not sustainable. The same is set aside. Thus, appeal is allowed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant