

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/2977/2011 - EX[DB]

Date 11/06/2012

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

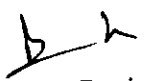
To :
M/S BALRAMPUR CHINI MILLS LTD
UNIT- BALRAMPUR, DISTT- BALRAMPUR(UP)
M/S BALRAMPUR CHINI MILLS LTD

Appellant
Vs
Respondent

C.C.E ALLAHABAD

I am directed to transmit herewith a certified copy of **Final order No.A/660**
passed by the Tribunal under **Section 35-C(1) of Central Excises Act, 1944**

2012 EX[DB] dated 07-6-12


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.BIPIN GARG
B-1/1289,A-VASANT KUNJ, NEW DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications 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,
WEST BLOCK NO.II, R.K. PURAM,
NEW DELHI-110066**

COURT NO. II

Central Excise Appeal No. 2977 of 2011

[Arising out of Order-in-Appeal No. 180-CE/APPL/ALLD/11 dated 20.9.2011 passed by the Commissioner (Appeals), Customs & Central Excise, Allahabad]

Date of Hearing/decision: 7th June, 2012

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?	

M/s. Balrampur Chini Mills Ltd.,

Appellant

Vs.

CCE, Allahabad

Respondent

Present for the Appellant : Shri Mayank Garg, Advocate
Present for the Respondent : Shri Bharat Bhushan, D.R.

**Coram: Hon'ble Shri Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Technical Member**

FINAL ORDER NO. A/660/2012-EX (BR)

Per Justice Ajit Bharihoke:

This appeal is directed against Order-in-Appeal dated 20th September, 2011 whereby the Commissioner (Appeals) upheld the Order-in-Original confirming demand of interest for

late payment in relation to Cenvat Credit wrongly availed and imposing penalty of Rs. 2,16,154/-.

2. The facts relevant for disposal of this appeal are that the appellant is engaged in the manufacture of VP Sugar, Molasses, Fusel Oil and Denatured/Rectified Alcohol/Ethanol falling under tariff heading 1701, 1703, 3824 & 2207 of the Schedule to Central Excise Tariff Act, 1985. The appellant is also availing Cenvat credit facility under Cenvat Credit Rules, 2004. Out of the products manufactured by the appellant Rectified Spirit is an exempted product from payment of duty. The appellant was not maintaining separate account of inputs or input services used for or in relation to manufacture of exempted product. During the course of audit it was found that that for the period January, 2008 to August, 2008 the appellant has not received Cenvat credit amounting to Rs. 2,09,858, Education Cess Rs. 4,197/- and S&H Education Cess Rs. 2,099/- attributed to input services used in or in relation to manufacture of exempted product i.e. Rectified Spirit as required under Rule 6(3A)(b) of Cenvat Credit Rules, 2004. When this fact was brought to the notice of the appellant, the appellant immediately debited Cenvat credit amounting to Rs. 2,16,154/- in Cenvat Credit account vide entry No. P65 dated 30th November, 2008. The appellant, however, failed to pay interest on late payment. The department issued show cause notice dated 21st May, 21.12.2009 calling upon the appellant as to why he should not be directed to pay interest on late

payment and why penalty should not be imposed on him under Section 11AC of the Central Excise Act read with Rule 15 of Central Excise Rules, 2004. After giving opportunity of being heard the Asst. Commissioner Central Excise, Firozabad confirmed the demand of interest and disallowed Cenvat credit and also imposed penalty of Rs. 2,16,154/- under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. Appeal preferred by the appellant was dismissed by the Commissioner (Appeals).

2. Learned Counsel for the appellant at the outset submitted that the appellant is not disputing the impugned order inasmuch as demand of interest is concerned. His challenge is against confirmation of penalty under Rule 15 of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944.

3. Learned Shri Mayank Garg, Advocate for the appellant pleaded that the adjudicating authority and also the appellate authority have imposed penalty on the appellant on incorrect interpretation of Rule 15(2) of the Cenvat Credit Rules, 2004. He later on gone through Rule 15(2) and pointed out that this rule is not applicable in the cases of wrong availment of Cenvat credit in relation to "Input Services". Thus impugned order imposing penalty is not sustainable and liable to be set aside.

4. Shri Bharat Bushan, learned D.R. on the other hand argued in favour of the impugned order. He has drawn our attention to Rule 15(4) of Cenvat Credit Rules, 2004 and

submitted that under the provision of this Rule penalty can be imposed on the assessee in case he has availed Cenvat credit in respect of input services by fraud, wilful mis-statement, collusion or suppression of facts, or contravention of any of the Finance Act or the rules made thereunder, as such the impugned order cannot faulted.

5. We have considered the rival submissions and perused the record. Undisputedly this is a case of wrongly availed Cenvat credit in respect of input services. It is not disputed that the appellant is engaged in manufacture and not a output service provider.

6. In order to appreciate rival contentions it would be proper to have a look on Rule 15 (2) & (4) of Cenvat Credit Rules, 2004 (preamended) which reads thus:-

"15(2). In case, where the CENVAT credit in respect of input or capital goods has been taken or utilized wrongly on account of fraud, wilful mis-statement, collusion or suppression of facts, or contravention of any of the provisions of Excise Act or the rules made thereunder with intention to evade payment of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.

(3)

(4) In a case, where the CENVAT credit in respect of input services has been taken or utilized wrongly by reason of fraud, collusion, wilful mis-statement, suppression of facts, or

contravention of any of the provisions of the Finance Act or of the rules made thereunder with intention to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of section 78 of the Finance Act."

8. In the instant case penalty has been imposed on the appellant under Rule 15(2) of Cenvat Credit Rules, 2004 read with section 11AC of the Central Excise Act. On reading of Rule 15(2) reproduced above it is evident that this rule is applicable only in respect of Cenvat credit wrongly availed by the assessee in relation to "Inputs" or "Capital Goods". This rule does not apply to wrong availment of Cenvat credit in relation to "Input Service".

9. Case of Revenue is that the appellant wrongly availed of Cenvat credit in relation to "Input". Therefore, rule 15(2) is not attracted in this case. Learned D.R. has pleaded that case of the appellant falls under Rule 12(4) of the Cenvat Credit Rules. We do not find merit in this contention. Bare reading of Rule 12(4) would show that it is applicable in the case in which the assessee is a service provider. However, in the instant case appellant is a manufacturer and not service provider. Thus, in our view Rule 15(4) is also not attracted. At best, the appellant can be penalised under Rule 15(3) to the extent of Rs. 2,000/-.

10. In view of the above, impugned order imposing penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with

Section 11AC of Central Excise Act cannot be sustained. Accordingly, impugned order is set aside and amount of penalty is modified to Rs. 2,000/- in accordance with Rule 15(3) of Cenvat Credit Rules, 2004. Accordingly, appeal is disposed off in above terms.

(JUSTICE AJIT BHARIHOKE)
PRESIDENT

(RAKESH KUMAR)
TECHNICAL MEMBER

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