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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 25/04/2012

Appeal No. E/2893/2011 - EX[DB]
E/S/3715/11-EX

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

To :
M/S NEEL KAMAL POLYTEX INDUS. (P) LTD.
AF-2/17, IMLAK KATRA-II, NADESAR, VARANASI
(U.P.)
221002

M/S NEEL KAMAL POLYTEX INDUS. (P) LTD. Appellant

Vs

C.C.E BHOPAL Respondent

STAY ORDER NO 695/2012-EX

I am directed to transmit herewith a certified copy of **Final order No. A/462 2012 EX[DB]** dated 18-4-12 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 BHOPAL
HOSHANGABAD ROAD, 48,
ADMINISTRATIVE AREA, AREA
HILLS, BHOPAL (M.P.) 462011

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 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.
Principal Bench. COURT NO. I

DATE OF HEARING /DECISION: 18/04/2012.

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. 2893 of 2011 with Excise Stay No. 3715 of 2011
[Arising out of the Order-in-Original No. 05 & 06/COMMR/CEx/ ADJ/STN/2011 dated 09.09.2011 passed by The Commissioner of Central Excise, Bhopal]

M/s Neel Kamal Polytex Industries (P) Ltd., Appellants

Versus

CCE, Bhopal Respondent

Appearance
Present Sh. Bipin Garg, Advocate for the Appellant.
Present Sh. Sanjay Jain, AR for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY Order No. 695/2012 – Ex(BR)
FINAL Order No. A/462/2012 – Ex(BR)

Per. Rakesh Kumar (Oral) :

The appellant have a unit for manufacture of Polypropylene Woven bags in Varanasi from where they clear the bags on payment of duty ~~for~~ to their factory located at Satna, Madhya Pradesh. In the factory at Satna, the bags are printed. The Satna unit takes cenvat credit of the duty paid on P.P. Bags and after printing the bags cleared the same on payment of duty ~~by~~ ~~duty~~ by utilising the cenvat credit. The case is in respect of that their Satna (M.P.) unit where the department is of the view that the process undertaken by the unit does not amount to manufacture and hence they are not eligible for cenvat credit. On this basis, the Commissioner vide order-in-original No. 05 & 06/COMMR/CEx/ ADJ/ STN/ 2011 dated 09.09.2011 confirmed the cenvat credit demand of Rs.88,53,209/- alongwith interest and imposed penalty of equal amount on them. Against this order of the Commissioner, this appeal alongwith stay application has been filed.

2. Heard both sides. After hearing both the sides, we were of the view that since a short issue is involved, the appeal can be taken up for final disposal. Accordingly with the consent of both the sides, the appeal was heard for final disposal after waiving the requirement of pre-deposit.

3. Shri Bipin Garg, Advocate, ld. Counsel for the Appellant, pleaded that in respect of the appellant unit at Satna, M.P. the department on its application had issued central excise registration, that the unit was subjecting the P.P. bags to the process of printing as per the customer specification, that the printed bags were cleared on payment of duty, that even if the process is treated as not amounting to manufacture, it would have to be treated as clearance of cenvat credit availed inputs as such which can be cleared on payment of duty equal to the cenvat credit availed and that since at the time of clearance of printed bags duty has been paid, the cenvat credit availed in respect of bags would have to be treated as reversed. He, therefore, pleaded that the impugned order is not correct.

4. Shri Sanjay Jain, the learned Departmental Representative defended the impugned order reiterating the findings of the Commissioner in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the record.

6. The case of the department is that the process undertaken by the appellant unit i.e. printing of polypropylene woven bags does not amount to manufacture and hence they are not eligible for cenvat credit. However, Rule 3(5) of the Cenvat Credit Rules, 2004 provides that when the cenvat credit availed inputs are cleared as such an amount equal to the cenvat credit required to be paid. They Even if the department's stand that process undertaken by the appellant does not amount to manufacture is accepted, this would have to be treated as clearance of cenvat credit availed inputs as such. Since the appellant have paid duty on the printed P.P. bags the cenvat credit availed would have to be treated as reversed. In view of this, impugned order demanding the cenvat credit alongwith interest and imposed penalty on the appellant is set aside. The appeal and stay application are allowed.

(Order dictated and pronounced in open Court).

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

Pant