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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/2382-2384/2010 - EX[DB] Date **10/05/2012**

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

To :
M/S RIBA TEXTILE LIMITED.
VILLAGE-CHIDANA, TEHSIL-GOHANA, DISTT.
SONEPAT (HARYANA)

M/S RIBA TEXTILE LIMITED. Appellant

Vs

C.C.E. ROHTAK Respondent

I am directed to transmit herewith a certified copy of **Final order No. A/540-542 2012 EX[DB]** dated 08-5-12 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. ROHTAK
SCO NO,6 SECTOR 1, ROHTAK.

2. Adv. / Consult
MR.B.S.YADAV,ADVOCATE
A 2/75, FIRST FLOOR, SAFDARJUNG ENCLAVE, N 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.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 17/04/2012.
DATE OF DECISION : 08/05/12.

Excise Appeals No. 2382-2384 of 2010

[Arising out of the Order-in-Appeal No. 47-48/SSS/RTK/2007 dated 28/03/2007 and 260/SSS/RTK/2007 dated 26/04/2007 passed by The Commissioner, Central Excise (Appeals), Delhi-III, Gurgaon.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri 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 would 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 Department Authorities? :

M/s Riba Textile Limited — Appellant

Versus

CCE, Rohtak — Respondent

Appearance

Shri B.S. Yadav, Advocate – for the appellant.

Shri S.R. Meena, Authorized Representative (DR) - for the Respondent.

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

FINAL Oral Order No. 540-542/2012-Ex(BR)

Per. Rakesh Kumar :-

The facts leading to these appeals are, in brief, as under.

1.1 The appellant are a 100% EOU engaged in manufacture of excisable goods falling under heading 5802 for export. For the purpose of export production, they were procuring indigenously manufactured goods free of excise duty under exemption Notification No. 22/2003-CE dated 31/3/03 and its predecessor notifications. The period of dispute is from April 1999 to March 2006. During this period, the appellant procured free of basic excise duty and AED (GSI), 8088000 litres of HSD from Indian Oil Corporation Ltd. (IOCL), Panipat, under Notification No. 22/2003-CE dated 31/3/03 and its predecessor Notification No. 1/95-CE; 37/99-CE and 37/2000-CE against CT-3 Certificates. With effect from 1/3/99, by Section 133 of the Finance Act, 1999, Additional Excise Duty (AED) of Rs. 1/- per litre was introduced on HSD, which was enhanced to Rs. 15/- per litre w.e.f. 1/3/05.

1.2 During the period of dispute, while the HSD procured against CT-3 certificate was free of Basic excise duty and AED (GSI), AED of Rs. 1/- per litre/Rs.1.5 per litre/Rs. 2/- per litre was paid on the same and w.e.f. 9/7/04, education cess at 2% of the duty was also paid. The appellant subsequently filed –

(a) 9 refund claim totalling Rs. 75,07,440/- in respect of receipt of 6264000 litre of HSD during April 1999 – March 2005 period ;

(b) one refund claim of Rs. 13,95,360/- in respect of receipt of 684000 litres of HSD during April 2006 – July 2006 period ; and

(c) 4 refund claims of amount totalling Rs. 23,25,600/- in respect of receipt of 1140000 litres of HSD during April 2005 – March 2006 period.

These refund claims were filed on the ground that the Notification No. 22/2003-CE and its predecessor Notifications also exempted the AED levied on HSD under Section 133 of the Finance Act, 1999.

1.3 The refund claims were rejected by the Assistant Commissioner as inadmissible. The refund claim of Rs. 75,07,440/- was also rejected as time barred.

1.4 On appeal to Commissioner (Appeals), the Assistant Commissioner's order was upheld.

1.5 Against the above order of CCE (Appeals), these three appeals have been filed.

2. Heard both the sides.

3. Shri B.S. Yadav, Advocate, the learned Counsel for the appellant, pleaded that the Notification No. 22/2003-CE and its predecessor notifications exempt from the whole of duty of excise, leviable under Section 3 of the Central Excise Act, 1944 and the whole of AED (GSI) and AED (T&TA) leviable under Additional Duties of Excise, (Goods of Special Importer) Act, 1957 and Additional Duties of Excise (Textile & Textile Articles) Act, 1978 respectively, the goods specified in the notification acquired by a 100% EOU for use in the manufactured of final products for export, that the term "duty of excise" in the notification also covers the AED on HSD leviable under Section 133 of the Finance Act, 1999, as this AED is also to be collected as duty of excise, that in this regard he relies upon Board's Circular No. 807/4/05-CX dated 10/2/05 wherein it has been clarified that AED levied on HSD under Section 133 of Finance Act, 1999 is not required to be paid on the goods exported under bond Rule 19 of the Central Excise Rules, 2002 and that in view of this the impugned order passed by CCE (Appeals) are not correct.

4. Shri S.R. Meena, the learned SDR, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and pleaded that the Apex Court in case of **Union of India vs. Modi Rubber Ltd.** reported in **1986 (25) E.L.T. 849 (S.C.)** has held that exemption Notification No. 123/74-CE and 27/81-CE exempting the goods from duty of excise leviable under Section 3 of the Central Excise Act, 1944 cannot be construed as

exempting Special excise duty or Additional excise duty leviable under Section 32 (4) of the Finance Act, 1979, that this judgment of the Apex Court is squarely applicable to the facts of this case, that the same view has been taken by the Tribunal in case of **CCE, Jammu vs. Jindal Drugs Ltd.** reported in **2011 (267) E.L.T. 653** wherein it was held that exemption Notification No. 56/2002-CE, which exempts certain specified goods manufactured in certain special areas from duty of excise leviable under Section 3 of Central Excise Act, 1944, AED (GSI) and AED (T&TA), does not cover education cess leviable under Finance Act, 2004, that Board's Circular No. 807/4/05-CX dated 10/2/05 is in respect of exports under bond under Rule 19 of Central Excise Rules 2002, and in the Circular itself it has been clarified that - since clearances under bond are not synonymous with clearances under exemption, the judgment of Hon'ble Supreme Court in case of **UOI vs. Modi Rubber Ltd.** (supra) would not be relevant, and that since in this case the goods have been cleared by IOCL, Panipat availing duty exemption under Notification No. 22/2003-CE and its predecessor exemption notifications which exempt only the duty of excise leviable under Section 3 of Central Excise Act, 1944, AED (GSI) and AED (T&TA), these exemption notifications cannot be extended to AED leviable on HSD under Section 133 of Finance Act, 1999. He, therefore, pleaded that there is no infirmity in the impugned order passed by CCE (Appeals).

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

6. Notification No. 22/2003-CE and its predecessor Notification No. 1/95-CE, 37/99-CE and 37/2000-CE exempt the goods supplied to a 100% EOU from the whole of –

(a) duty of excise leviable under Section 3 of Central Excise Act, 1944 ;

(b) AED (GSI) leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957 ; and

(c) AED (T&TA) leviable under Additional Duties of Excise (Textile & Textile Articles) Act, 1978.

The short point of dispute is as to whether the above exemption Notification issued under Section 5A of the Central Excise Act, 1944 can be construed as covering AED leviable on HSD under Section 133 of Finance Act, 1999 also.

7. We find that in the case of **UOI vs. Modi Ruber Ltd.** (supra); identical issue was involved – whether exemption Notification No. 123/74-CE issued under Rule 8 (1) of Central Excise Rules, 1944 (now Section 5A of Central Excise Act, 1944) which exempted – "tyres for motor vehicles falling under sub-item (1) of item No. 16 of 1st Schedule to the Central Excise Act, 1944 <u>from so much of duty of excise</u> leviable thereon, as is in excess of 5% ad-valorem" also covered special duty of excise leviable under Section 32 of the Finance Act, 1979. The Apex

Court in this case held that the expression "duty of excise" cannot be given a longer amplitude to include special duty of excise leviable under Finance Act, 1979 merely because this expression is not qualified by – "payable under the Central Excise Act". This case is on a better footing for the Revenue, as the Notification No. 22/2003-CE and its predecessor notification are very specific about the levies covered by the exemption – "duty of excise leviable under Section 3 of Central Excise Act, 1944", "Additional duty of excise leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957" and "Additional duty of excise leviable under Additional duties of Excise, (Textile & Textile Articles) Act, 1978". The language of these notifications leaves no doubt about the duties leviable under different Acts which are exempt under these notifications. Therefore, there is no scope to cover AED leviable on HSD under Section 133 of the Finance Act, 1999 under Notification No. 22/2003-CE and its predecessor notifications, when the AED leviable under Finance Act, 1999 is not mentioned in these notifications. The Board's Circular No. 807/4/05-CX dated 10/2/05 is about export of goods without payment of duty under bond under Rule 19 and as clarified in para 4 of the Circular, the clearances under bond without payment of duty are not synonymous with clearances under exemption. In this case, the goods have been cleared to a 100% EOU by claiming exemption under Notification No. 22/2003-CE and its predecessor notification and not under bond under Rule 19 of Central Excise Rules, 2002. Therefore, the Board's Circular is not applicable to this case.

8. In view of the above discussion, we hold that the refund claims have been rightly rejected and there is no infirmity in the impugned orders. The appeals are dismissed.

(Pronounced in the open court on 8/5/2014

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK