

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

Appeal No. : E/3290/2009-EX[DB]

Dated: 10/09/2012

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

SURYA ROSHNI LIMITED
Prakash Nagar, Bahadurgarh, Haryana

SURYA ROSHNI LIMITED

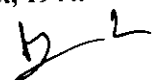
(Appellant)

VS

C.C.E. ROHTAK

(Respondent)

I am directed to transmit herewith a certified copy of Final Order No. A/1149/2012-EX[DB] dated 06/09/2012 passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.


Assistant Registrar
EXCISE Appeal Branch

Copy To,

1. Respondent

C.C.E. ROHTAK

SCO NO,6 Sector 1, Rohtak.

2. Advocate(s) / Consultant(s):

SH. R.S. SHARMA,ADV.,

C-9/9656, VASANT KUNJ, N.

DELHI-70

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

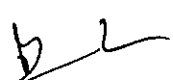
10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070

12. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad - 500038

13. Office Copy

14. Gaurd File


Assistant Registrar
EXCISE Appeal Branch

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066
Principal Bench, New Delhi**

COURT NO. 1

DATE OF HEARING: 27.08.2012

DATE OF DECISION: 6/9/2012

Excise Appeal No.E-3290/09

M/s. Surya Roshni Ltd.

Appellants

Vs.

CCE, Rohtak

Respondent

[Arising out of the Order-in-Appeal No.287-/MA/RTK/2009 Dated 12.10.2009 passed by the Commissioner (Appeals) Central Excise Delhi-III, Vanijya Nikunj, Udyog Vihar, Phase-V, 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) Rule, 1982? :
 2. Whether it would be released under Rule 27 of the CESTAT (procedure) Rule, 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? :
-

Appearance

Sh. R.S.Shrma, Advocate - for the Appellant
Sh. I Baig, Departmental Representative - for the Respondent

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

Per Rakesh Kumar

FINAL ORDER No. A/1149/2012-Fr(BE)

The facts leading to this appeal by the revenue are in brief is as under:-

- 1.1 The appellant are engaged in the manufacture of M.S. Pipes and Tubes (black as well as galvanized) chargeable to Central Excise Duty under Chapter-73 of Central Excise Terrif. They avail Cenvat Credit of Central Excise duty paid on inputs and capital goods used in or in relation to manufacture of their final products. During the period of dispute i.e. from June 2007, to November 2007 the respondent, in addition to clearances of pipes and tubes on payment of duty to buyers in domestic tariff area, also supplied the goods to SEZ Developers without payment of duty. The Department being of the view that the goods supplied to SEZ Developers are "exempted goods" and since the common Cenvat Credit availed inputs have been used in or in relation to manufacture of dutiable as well as exempted final products, and separate account and inventory of inputs meant for dutiable and exempted final products have not been maintained, the Appellant, in respect of supplies of pipes & tubes to SEZ Developers, would be liable to pay an amount equal to 10% of the sale value under Rule 6(3) (b) of the Cenvat Credit Rules 2004. On this basis a Show Cause Notice on 29.04.2008 was issued to the appellant for recovery of an amount of Rs. 14,40,045/- along with interest and also for imposition penalty on them.

- 1.2 The Show Cause Notice was adjudicated by the Joint Commissioner Central Excise, Rohtak Vide Order in original dtd. 07.01.2009 by which the demand for the amount as made in the Show Cause Notice was confirmed along with interest and besides this, penalty of equal amount was imposed on the Appellant.
- 1.3 On appeal being filed against the order of the Joint Commissioner, the Commissioner (appeals) vide order in Appeal dtd. 12.08.2009 upheld the Joint Commissioner's Order except for reducing the penalty for Rs.1,40,045/.
- 1.4 Against this order up to Commissioner (Appeals), this Appeal has been filed.
2. Heard both the sides,
3. Sh. R.S. Sharma, Advocate, the learned counsel for the appellant, pleaded that the goods supplied from DTA to SEZ Developers are export, within the meaning of this term as defined in Section 2(m) of the SEZ Act, 2005 that since supplies to SEZ Developers are Exports, the same cannot be treated as "exempted goods", that even otherwise, since there is no exemption notification issued under section 5A(1) of the Central Excise Act, 1944 exempting supplies to SEZ Developers from duty, and supplies to SEZ Developers do not attract duty as the same are treated as export, the same

cannot be treated as exempted goods within the meaning of this term, as defined in Rule 2(d) of Cenvat Credit Rule, 2004, that the Apex Court in the case of **Hindustan Petroleum Ltd. Vs. Collector of Central Excise reported in 1995 (77)E.L.T. 256 (S.C.)** has held that the goods exported without payment of duty under Rule 13 of Central Excise Rule, 1944 not "exempted goods", that in view of this, by virtue of the provisions of rule 6(6) of the Cenvat Credit Rules 2004, the provisions of sub rule (1) (2) & (3) of Rule 6 of Cenvat Credit Rules, 2004, would not be applicable to the supplies of excisable goods made to SEZ Developers without payment of duty, that same view has been taken by the Tribunal in the case **M/s Sujana Metal Products Ltd. Vs. Commissioner Central Excise, Hyderabad reported in A.I.T. 2011-385-CESTAT**, wherein the Tribunal held that even during the period of prior to 31.12.08, the Rule 6(6) of the Cenvat Credit Rule covered supplies to SEZ Developers and that in view of the above submissions, the impugned order is not correct.

4. Sh. I Baig, the learned Department Representative, defended the impugned order by reiterating the finding of Commissioner (appeals) and pleaded that the supplies to SEZ Developers were specifically included in Sub-Rule (6) of Rule 6 of the Cenvat Credit Rule 2004 w.e.f. 31.12.2008, that this amendment not being of retrospective nature, during period prior on 31.12.2008, the supplies to SEZ Developers were not covered by this sub-rule and, hence, the provisions of sub-rule (1) (2) & (3) were applicable, that the supplies to SEZ Developers can not be treated as exports, as the term "export"

means taking the goods out of the country, that deemed exports cannot be treated as exports for the purpose of Rule 6(6) of the Cenvat Credit Rules, 2004, that since the clearances to SEZ Developers have been made without payment of duty, the same have to be treated as "exempted goods" and since the appellant have used Common Cenvat Credit availed inputs in the manufacture of the final products cleared on payment on duty and the exempted final products supplied to SEZ Developers, in respect of the good supplied to SEZ Developers, the appellant would be liable to pay an amount equal to 10% of the sale value in terms of the provisions of Rule 6(3)(b) of the Cenvat Credit Rules. He therefore pleaded, there is no infirmity the impugned order.

5. We have considered that rival submissions. There is no dispute that common Cenvat Credit availed inputs have been used in the manufacture of goods supplied to DTA buyers on payment on duty and also in respect of the goods supplied to SEZ Developers without payment of duty. The point of dispute is as to whether the goods supplies to SEZ Developers without payment of duty are to be treated as "exempted goods" within the meaning of this term as defined in rule 2(d) of the Cenvat Credit Rule 2004 and whether in respect of these supplies, the provision of sub rule (2) and (3) of Rule 6 *ibid* would be applicable.

6. The term "exempted goods" as defined in Rule 2(d) in Cenvat Credit Rule means excisable goods which are exempted from the whole of the duty leviable thereon including the goods which are chargeable to nil rate of duty. There is no dispute about the fact that neither the goods, in question, are chargeable to nil rate of duty nor these goods when supplied to SEZ Developers are exempted from payment of duty by virtue of some exemption notification issued under 5A(I) of the Central Excise Act.,1944. Admittedly no duty is required to be paid on the goods supplied to SEZ Developers, as the same are treated as export in terms of the definition of this terms as given in Rule 2(m) of SEZ Act'2005. Though the learned departmental representative pleads that supplies to SEZ Developers are only deemed export and cannot be treated as export for the purpose of Central Excise Act,1944 and the Rules made there under, the Section 51 of the SEZ Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other Law for the time being in force or in any instrument having effect by virtue of any Law other than this Act. In view of the overriding provisions of 51 of SEZ Act, supplies to SEZ as well as to SEZ Developers by a D.T.A. unit would have been treated on exports for the purpose of Cenvat Credit Rule, 2004. Since the supplies to SEZ Developers are export, the same cannot be treated as "exempted goods" and hence the Provisions of Sub-Rule (1), (2) & (3) of the rule 6 of the Cenvat Credit Rules,2004 would not be applicable. Same view

have been taken by the Tribunal in the case of **Sujana Metal Products Ltd. Vs. CCE, Hyderabad (Supra)**, wherein the tribunal held that during the period prior to 31.12.2008, supplies to SEZ Developers made without payment of duty are to be treated as exports and would be covered by sub-rule (6) of Rule (6) and accordingly the provision of sub-rule (1) (2) & (3) of Rule 6 would not be applicable.

7 In view of the above discussion, the impugned order is not sustainable. The same is ^{set} ~~not~~ aside. The appeal is allowed.

(Justice Ajit Bharihoke)
(President)

(Rakesh Kumar)
Member (Technical)