REGISTERED / AD

FAX : 011-26108426

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

Dated: **13/12/2012**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **A/1361-1364/2012-EX[DB]** dated **11/12/2012**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Asstt. Registrar(EXCISE Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	E/3137/2006	**GRASIM INDUSTRIES LTD** Unit: Bhiwani Textile Mills,Birla Colony,Bhiwani(Haryana)
2	E/3138/2006	**SH R K SHARMA,MANAGER(EXCISE)** M/s Bhiwani Textile Mills,Birla Colony,Bhiwani(HR)
3	E/3139/2006	**SH VIMAL ARORA,DGM(ACCOUNT &FINANACD)** M/s Bhiwani Textile Mills,Birla colony,Bhiwani(HR)
4	E/3305/2006	**SH RAM KISHAN,SUPDTT** Central Excise Commissionerate-Delhi-I,,I.P.Estate,C.R. Building,N.Delhi

	Name and Address of Respondent
5	**C.C.E.ROHTAK** 17-P,Sector I,Rohtak.

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Other Appellants and Respondents as per Annexure

Copy To
6Advocate(s) / Consultant(s):

V. Laxmikumaran
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110014

K. K. Anand
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LAJPAT NAGAR-III,
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7 Bar Association, CESTAT, Delhi

8 Director Publications, Customs, Excise, I.P. Estate, Delhi

9 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

10 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

11 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

14 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

16 C.D.R. **17** Office Copy **18** Guard File

Asstt. 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

Excise Appeal No. 3137-3139 and 3305 of 2006

[Arising out of the Order-in-Appeal No. 18/Commr/RP/2006 dated 18/05/2006 passed by The Commissioner of Central Excise, Rohtak.]

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 Grasim Industries Limited]
Shri R.K. Sharma, Manager] Appellant
Shri Vimal Arora, DGM]
Shri Ram Kishan, Superintendent]

Versus

CCE, Rohtak Respondent

Appearance

Shri V. Laxmikumaran, Advocate (for E/3137-3139/06) and Dr. G.K. Sarkar, Advocate (for E/3305/06) – for the appellants.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

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

DATE OF HEARING : 05/11/2012.
DATE OF DECISION : 11/12/2012.

E.T.(BR)

Final Order No. A/1361-1364/2012- Dated : ___________

Per. Rakesh Kumar :-

The appellant unit are engaged in manufacture of spun yarn falling under Chapter 55 of Central Excise Tariff and also the manufacture of woven fabrics falling under same Chapter of the Central Excise Tariff. The unit for manufacture of spun yarn and unit for manufacture of fabrics are separated by a road. During period prior to 1/4/96, the appellant had separate Central Excise Registration. On 1/4/96, an application was made for single registration for both the units, which was accepted by the Jurisdictional Central Excise Authorities. With effect from 3/9/96, the facility of Modvat credit was extended to textiles by Notification No. 29/1996-CE (NT) dated 3/9/96 issued under Rule 57A of Central Excise Rules, 1944. With effect from 23/7/96, in terms of exemption Notification No. 22/1996-CE issued under Section 5A (1) of Central Excise Act, the yarn cleared by a composite textile mill within the factory for manufacture fabrics became fully exempt from duty. Prior to 23/7/96 this exemption was not available. Since, the appellant since April 1996 had obtained common registration for both the units - the unit manufacturing yarn and the unit manufacturing fabrics and the yarn division started clearing the yarn to the fabric division by availing full duty exemption under Notification No. 22/1996-CE. However, a small quantity of yarn, which was being sold outside to independent buyers, was being cleared on payment of duty. The department has alleged that the Jurisdictional Central Excise Inspector and Superintendent in connivance with the appellant, have issued a back dated common registration to enable the yarn division to avail of the duty exemption under Notification No. 22/1996-CE, as according to the Department, the appellant's application for common registration for both the units had been made only in August 1997, while it was shown to have been made in April 1996. On this basis, it was alleged that the permission for common registration is invalid and the appellant would not be eligible for duty exemption in respect of clearances of yarn from the yarn division to fabric division for its captive consumption and beside this, would also not be eligible for benefit of Cenvat credit facility. On this basis, a show cause notice was issued to the appellant company, Shri R.K. Sharma, Manager, Shri Vimal Arora, DGM and Shri Ram Kishan, Superintendent, the then Jurisdictional Inspector, Central Excise and also Shri L.S. Chandalia, the then Superintendent, Central Excise, for –

(a) recovery of Central Excise duty amounting to Rs. 3,76,38,745/- in respect of clearances of spun yarn from the yarn division to the fabric division during the period from 1/12/96 to 1/6/98 alongwith interest and imposition of penalty on the appellant company under Section 11AC ;

(b) recovery of allegedly wrongly taken Cenvat credit amounting to Rs. 6,64,04,235/- under Rule 57I of Central Excise Rules, 1944 alongwith interest and also for imposition of penalty on the appellant company (weaving division) under Rule 57I of Central Excise Rules, 1944 readwith Section 11AC of Central Excise Act, 1944 ; and

(c) imposition of penalty under Rule 209A of Central Excise Rules, 1944 on Shri Vimal Arora, DGM (Accounts), Shri R.K. Sharma, Manager (Excise) and Shri L.S. Chandalia, the then Superintendent, Shri Ram Kishan, the then Inspector.

1.1 The above show cause notice was adjudicated by the Commissioner vide order-in-original dated 18/5/06 by which –

(a) the total duty and Cenvat credit demand of Rs. 10,40,42,980/- was confirmed against the appellant company alongwith interest on it under Section 11AB and penalty of equal amount was imposed on them under Section 11AC ; and

(b) penalty of Rs. 5,00,000/-, Rs. 2,50,000/- and Rs. 50,000/- were imposed under Rule 209A of Central Excise Rules, 1944 on Shri Vimal Arora, DGM (Accounts), Shri L.S. Chandalia, the then Superintendent and Shri Ram Kishan, the then Inspector, Range Bhiwani.

1.2 Against the above order of the Commissioner (Appeals) these appeals have been filed.

2. Heard both the sides.

3. Shri V. Laxmikumaran, Advocate, the learned Counsel representing the appellant company, Shri R.K. Sharma and Shri Vimal Arora and Dr. G.K. Sarkar, Advocate, representing Shri Ram Kishan, pleaded that the department's allegation that the

appellant's application for issue of single registration had been received in August 1997 while it had been back dated by the Jurisdictional Central Excise officers, is without any basis, that the appellant from the very beginning have a single registration under the Factories Act and with other statutory authorities like ESI, PF etc., that in April 1996 they had applied for common central excise registration for their yarn and fabric divisions and the same had been granted at that time, that since the manufacturing process of the yarn division and the fabric division is interlinked and not only this, the power source is also common, a common registration has been correctly granted, that in terms of the clarification issued in para 3.2 of CBEC's Manual and Supplementary Instructions, common registration can be granted to two units of the same assessee separated by public road, canal or railway line, if the product manufactured in one unit is substantially used for production of finished product in the other unit and the units have common electricity supply, common sales tax registration, common income tax assessment etc., that all these conditions for common registration are satisfied in the appellant's case, that in view of this, the common registration had been correctly allowed and hence, the benefit of exemption under Notification No. 22/1996-CE dated 23/7/96 has been correctly claimed in respect of clearances of yarn by the yarn division and the Modvat credit had been correctly taken by the fabric division in terms of Notification No. 29/1996-CE (NT) dated 3/9/96 and that in view of the judgment of the Tribunal in the case of **Escorts Limited vs. CCE, Delhi** reported in **2011 (273)**

E.L.T. 415 (Tri. – Del.), when common registration to the two units had been allowed after due verification of details in the application, its retrospective withdrawal is not appropriate. It was, therefore, pleaded that the impugned order demanding duty and allegedly wrongly taken Cenvat credit from appellant company and imposing penalty on the appellant company as well as on its employees is not sustainable. As regards, Shri Ram Kishan, the then Inspector, Central Excise, it was pleaded that there is absolutely no basis for allegation that the common registration had been granted from a back date, that the application for registration had been received in April, 1996 and since the two units of the appellant company were interconnected and the criteria prescribed in this regard in the Board's instructions was satisfied, the common registration was allowed. It was, therefore, pleaded there was absolutely no justification for imposition of penalty of Rs. 50,000/- on Shri Ram Kishan, under Rule 209A of Central Excise Act.

4. Shri R.K. Verma, the learned Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner in it. Shri Verma emphasised that the spinning unit and weaving units are two separate units and the same cannot be said to be interconnected and there was no justification for common registration. He further pleaded that since the common registration had been wrongly granted, the two units have to be treated as separate units and not as a composite mill and, hence, neither the spinning division was eligible for duty exemption

under Notification No. 22/1996-CE, nor the fabric division was eligible for Modvat benefit under Notification No. 29/1996-CE (NT) dated 3/9/96. He, therefore, pleaded that there is no infirmity in the impugned order.

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

6. The key question in this case is as to whether during the period of dispute, common central excise registration had been correctly granted to the appellant or not. In this regard, the department's allegation is that the appellant's application for common registration had been received in the Range Office only in August 1997 and the Range staff Shri L.S. Chandalia and Shri Ram Kishan, Inspector in-connivance with the appellant, issued common central excise registration certificate from back date. On going through the records, we find that there is absolutely no evidence in support of this allegation. The records show that the application for common registration had been received in the range office in April 1996 and thereafter the common registration had been allowed.

7. In terms of para 3.2 of CBEC's Manual of Supplementary Instructions, separate registration is required in respect of separate premises of the same manufacturer except in the cases where two or more premises are actually part of the same factory [where process are interlinked but are separated by public road, canal or railway line] and that the fact that the two premises are

part of the same factory to be decided by the Commissioner based on the factors such as the product being manufactured in one premises being substantially used in the other premises for manufacture of final products, large number of raw materials being common, common electricity supply, common labour force, common administration/work management, common sales tax registration and assessment, common income tax assessment etc. In this case, the bulk of the yarn manufactured in the yarn unit is used in the fabric unit for manufacture of fabrics. It is also not denied that the electricity supply of the two units is common and the sales tax assessment and administration is also common. Beside this, we also find that the appellant have one single registration under the Factories Act and Pollution Control Act and that other statutory authorities like ESI, PF etc. In view of this, we hold that the two units of the appellant company have to be treated as one factory and hence common registration certificate has been correctly granted to them. Since, during the period of dispute, they had already been issued a common registration, they have to be treated as composite mill and, hence, the benefit of Notification No. 22/1996-CE dated 23/7/96 for the purpose of duty exemption in respect of yarn cleared by the yarn division to fabric division and the benefit of Notification No. 29/1996-CE (NT) dated 3/9/96 for the purpose of Modvat credit to fabric division had been correctly availed and, as such, the demands for duty and Modvat credit against the appellant company are not sustainable. Since the duty and Modvat credit demand are not sustainable, there would be no case for imposition of penalty either on the appellant or on its employees or on the range staff. In view of this, the impugned order is set aside. The appeals are allowed.

(Pronounced in open court on 11/12/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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