

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

Appeal No. : E/918/2005-EX[DB]

Dated: 11/07/2012

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

**RANUTROL INSTRUMENTATION
LTD.**
414, NEW DELHI HOUSE
BARAKHAMBA ROAD, NEW DELHI

**RANUTROL INSTRUMENTATION
LTD.**

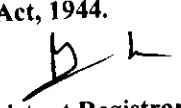
(Appellant)

VS

(Respondent)

C.C.E. DELHI II

I am directed to transmit herewith a certified copy of Final Order No. A/795/2012-EX[DB] dated 02/07/2012 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. DELHI II

C.R. Building, I.P. Estate, New Delhi
110002

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

J M Sharma

252, BASANT ENCLAVE, (NEAR
VASANT VIHAR) N DELHI-110057

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

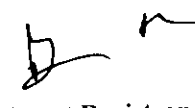
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road,
Ahmedabad-15

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. Gaurd File


Assistant Registrar
EXCISE Appeal Branch

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 2.7.2012

Central Excise Appeal No.918 of 2005

Arising out of the order in appeal No.244-CE/DLH/2004 dated 16.12.2004 passed by the Commissioner (Appeals), Central Excise Delhi II.

Hon'ble Mr. Justice Ajit Bharihoke, President
Hon'ble Mr. Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	

Ranutrol Instrumentation Ltd.

... Appellant

Vs.

C.C.E., Delhi II

.. Respondent

Present for the appellant :Shri J.M. Sharma, Consultant
Present for the respondent :Shri I. Baig, A.R.

FINAL Order No. A/ 795/ 2012-Ex(CBR)

Per Mr. Rakesh Kumar (Oral):

The appellant are engaged in the manufacture of electrical equipment chargeable to central excise duty under Chapter 85 and 90 of the Central Excise Tariff Act, 1985. They were availing cenvat credit of central excise duty paid on inputs used in or in relation to the manufacture of their final product. During the period prior to 1.4.97, they were paying duty at concessional rate ^{under} an exemption Notification and ^{was} availing input duty credit. With effect from 1.4.97, they opted to avail the benefit of Notification No.16/97-CE under which

clearances upto certain value ^{have} fully exempt from duty. At the time of switching over to full duty exemption w.e.f. 1.4.97, they had certain stock of inputs in respect of ^{which} ^{of} ^{the} ^{inputs} ^{which} ^{had} ^{been} ^{availed} . However, they did not reverse the cenvat credit in respect of these inputs and the same were subsequently used in manufacture of finished product, which were cleared at nil rate of duty by availing full duty exemption. The Department was of the view that the appellant were not eligible for cenvat credit of Rs.7,36,344/- involved in respect of inputs lying in stock as on 1.4.97, which were used in the manufacture of exempted final product. In view of this, show cause notice dated 26.9.97 was issued for recovery of this credit ^{from} the appellant along with interest and also for imposition for penalty. The SCN invoked Rule 57 C of Central Excise Rules, 1944 for denial of this credit. Show cause notice was adjudicated by the Assistant Commissioner vide order in original dated 8.12.2002 by which cenvat credit demand as made in the show cause notice was confirmed along with interest under Rule 12 of Cenvat Credit Rules, 2002 and besides this, penalty of equal amount was also imposed on the Appellant under Rule 13 of Cenvat Credit Rules, 2002. On appeal to the Commissioner (Appeals), this order of the Assistant Commissioner was upheld vide order in appeal No.13/2004 dated 16.12.2004. Against this order, this appeal has been filed.

2. Heard both sides.

3. Shri J.M. Sharma, Consultant, the learned Counsel for the appellant pleaded that the appellant in respect of the cenvated input lying in stock as on 1.4.97 were not required to reverse the cenvat credit and in this regard he relies upon the judgment of the Tribunal in the case of **C.C.E., Rajkot vs. Ashok Iron & Steel Fabricators – 2002 (140) ELT 277 (Tri-LB)**, the SLP against which filed by the Department was dismissed by the Apex Court vide judgment reported in 2003 (156) ELT A 212; that show cause notice has been issued to the appellant by invoking Rule 57C and hence at this stage the Department cannot deny the credit by invoking Rule 57 H(7) of the Central Excise Rules; that in this regard, the appellant relies upon the decision of Hon'ble Supreme Court in the case of **C.C.E.,**

Nagpur vs. Ballapur Industries Ltd. reported in 2007 (215) ELT 489 (SC)

wherein while remanding the case to the Commissioner, it was held that it would be not open to the commissioner to invoke Rule 7 of the Valuation Rules, 1975 which had not been ^{invoked} in the SCN, that by filing fresh declaration on 1.8.97 the appellant had decided to opt out of the SSI exemption and had also written to the Department for withdrawing from the SSI exemption from 1.4.97 and giving details of the clearances made during the period from 1.4.97 to 31.7.97, had offered to pay full duty in respect of those clearances, to which there was no response from the Department; that if the appellant had been allowed to pay the normal duty in respect of clearances during the period from 1.4.97 to 31.7.97, they would not be required to reverse the cenvat credit in question, and as such their net duty liability would come to only Rs.1,21,712/- and that this plea had been made to the Commissioner (Appeals) but the same was not considered. He, therefore, pleaded that in view of this, the impugned order is not correct.

4. Shri I. Baig, learned Senior Departmental Representative, defended the impugned order and reiterating the finding of the Commissioner (Appeals) in the impugned order emphasized that – (a) the appellant's case is squarely covered by Rule 57H(7) of Central Excise Rules, 1944 which provides that where a manufacturer who opts for exemption from the whole of duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been availing of input duty credit, before exercising the option for such exemption he shall be required to pay an amount equivalent to the cenvat credit, if any availed, in respect of the inputs lying in stock or in process or contained in the finished products lying in stock on the date when such option is exercised; that in view of this specific provision of Rule 57H(7), the judgment of the Larger Bench of the Tribunal and of the Apex Court in the case of **Ashok Iron and Steel Fabricators** (supra) cited by the appellant would not be applicable; that it is settled law that when correct facts have been stated in the show cause notice, quoting wrong provisions will not vitiate the same; that cenvat credit of Rs.7,36,344/- required to be paid back but not paid by the

Appellant can always be recovered by invoking Rule 57H(7), even if this rule was not invoked in the SCN, that as regards the declaration made by the appellant to opt out SSI exemption scheme w.e.f. 1.4.97, in accordance with the provisions of the exemption Notification No.16/97-CE, once an assessee has opted to avail exemption he can not change the option; that in any case, neither the department has taken decision in respect of Appellant's request for withdrawing from the exemption scheme w.e.f. 1.4.97 nor they had opted out for the period from 1.4.97 to 31.7.97. He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have carefully considered the submissions made from both the sides and perused the records. There is no dispute about the fact that during the period prior to 1.4.97 appellant were paying duty at concessional rate under notification No.1/93-CE and were availing input duty credit. It is also undisputed that the appellant had filed declaration on 1.4.97 indicating their option to avail the benefit of exemption Notification No.16/97-CE. Till 31st July 1997 the appellant were clearing the finished goods without payment of excise duty. Admittedly, the appellant have not reversed the cenvat credit amounting to Rs. 7,36,344/- pertaining to inputs in stock or in process as on 31.3.1997; despite having availed the benefit of exemption notification No.16/97 from 1.4.97. The Notification which was availed by the Appellant with effect from 1.4.97 is a notification based on the value of clearances in a financial year. Hence, in view of this ^{under this} provision of sub-rule (7) of Rule 57H, at the time of opting for this exemption with effect from 1.4.97, the appellant were required to reverse the cenvat credit on the inputs in stock or in process or contained in the finished product lying in stock. Thus, the provisions of Rule 57H(7) are applicable to the appellant's case and this has not been controverted by them. We are of the view that since the correct facts had been narrated in the show cause notice even if citing Rule 57C for reversal of cenvat credit, the appellant had been given sufficient information as to what was the charge against them and, therefore, not citing Rule 57H(7), which was precise ^{the} the rule applicable in this case would not vitiate the SCN. Therefore, we hold that cenvat credit demand of Rs.7,36,344/- has been correctly upheld against them.

6. Appellant's ^{another} plea is that vide letter dated 1.8.97 they had intimated the Department of their intention to opt out the exemption, w.e.f. 1.4.97 and if they had been allowed to opt out of exemption w.e.f. 1.4.97, they would not be required to reverse the cenvat credit, in dispute, and their duty liability would be only Rs. 1,21,712/-. We are of the view that in view of condition (i) of the Notification No. 16/97-CE, the option to avail of the exemption has to be made before effecting first clearances in a financial year and such option once exercised, shall be final and cannot be withdrawn in the same financial year under any circumstances. Therefore, there is no question of the Appellant being allowed to opt out of the exemption Notification No. 16/97-CE w.e.f. 1.4.97. Therefore, their plea that if allowed to opt out of the exemption w.e.f. 1.4.97, their net duty liability would be only Rs. 1,21,712/- is without any merit. We find that same view has been taken by the Tribunal in the case of **Mona Plastics vs. C.C.E., Mumbai IV – 2003 (156) ELT 482 (Tri-Mumbai)**.

7. In view of the above discussion, we do not find merit in the appeal of the appellant. The appeal is accordingly dismissed.

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Technical Member

scd/