IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPLICATION NO: E/COD/85543/2018
IN
APPEAL NOS: E/373 & 461/2009 & E/86437/2018

[Arising out of Order-in-Original No: 22/CEX/2008 dated 30th December 2008 passed by the Commissioner of Central Excise, Pune – I.]

For approval and signature:

Hon'ble Dr D M Misra, Member (Judicial)
Hon'ble Shri C J Mathew, 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?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

<u>APPEAL NO: E/373/2009</u>

Saertex India Pvt Ltd … ***Appellant***

versus

Commissioner of Central Excise
Pune – I ***…Respondent***

APPEAL NO: E/461/2009

Commissioner of Central Excise
Pune – I … ***Appellant***

versus

Saertex India Pvt Ltd …***Respondent***

APPLICATION NO: E/COD/85543/2018
IN
E/86437/2018

Commissioner of Central Excise
Pune – I … ***Appellant***

versus

PKC Bose …***Respondent***

Appearance:

Shri Gajendra Jain, Advocate for the assessee

Shri AB Kulgod, Assistant Commissioner (AR), Shri AS Parab, Assistant Commissioner (AR) and Shri MR Melvin, Superintendent (AR) for Revenue

CORAM:

Hon'ble Dr D M Misra, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 04/10/2018
Date of decision: 04/10/2018

ORDER NO: A/88525-88527 / 2018

Per: C J Mathew

This dispute of M/s Saertex India Pvt Ltd, manufacturers of 'stitch bonded fabric', pertains to the availment of CENVAT credit of ₹1,86,49,718/- which was sought to be recovered, along with interest thereon, and the imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 read with rule 15(2) of CENVAT Credit Rules, 2004 in order-in-original no. 22/CEX/2008 dated 30th December 2008 of Commissioner of Central Excise, Pune – I. The show cause notice proposed recovery of total of ₹ 3,02,38,918/-, covering the period from July 2006 to August 2007 and ₹ 1,15,89,200 covering the period from April 2007 to August 2007 at 10% of value of exempted goods for failure to maintain separate set of accounts, as prescribed in rule 6 of CENVAT Credit Rules, 2004, of inputs utilised in common for manufacture of both dutiable and exempt goods on which credit of duties has been availed upon procurement. The impugned order has dropped the demand for the latter period as the assessee has evidenced compliance of the requirement to maintain separate set of records.

2. Narrating the background, Learned Counsel submits that, while a portion of ‘stitch bonded glass fibre fabrics’ has been sold on payment of appropriate duty, certain clearances were being effected to manufacturers of ‘rotor blades for wind operated electricity generators’ who were entitled to procurement without payment of duty. It is their contention all along that they had been limiting the availment of CENVAT credit on common inputs to the extent of consumption in the manufacture of dutiable goods. That the original authority had accepted this contention is, according to Learned

Counsel, clearly evidenced by the dropping of proceedings for the period after June 2007 thus:

> *'20.8 The claim of the assessee was got verified again and it has been reported by the concerned Range Superintendent that the material received under the GRNs used in the manufacture of exempted products had either not suffered duty or if it had suffered duty no Cenvat Credit on the same has been availed by them on the duty paying documents. Since it is very clear that the assessee had maintained separate accounts and had not availed for any credit on the material used in the manufacture of exempted products for the period 1/4/07 onwards, I hold that the duty demanded in terms of Rule 6(3)(b) of the Cenvat Credit Rules, 2004 amounting to Rs.1,15,89,200/- cannot be sustained and is liable to be dropped.'*

3. Revenue is in appeal against the dropping of penal provisions proposed to be imposed on Shri PKC Bose, Director of the assessee-company and has sought condonation of delay of 3148 days in filing of their appeal which was attributed to the mistake in proceeding with the assessee as respondent instead of the individual and the rectification for conformity with the review ordered by the competent authority. The justification offered for this delay appears to be acceptable. We condone the delay and as the appeal of the assessee is listed for disposal today, the appeal of Revenue is also taken up for disposal.

4. Learned Authorised Representative contends that the failure to

maintain records had been established in the impugned order and the only consequence of such breach is payment of 10% of the ‘sale price’ of the exempted final product. As far as their own appeal is concerned, it is the contention of Learned Authorised Representative that the adjudicating authority had wrongly excluded the Director, Shri PKC Bose, from the penal provisions.

5. It is seen from the records that the appellant had not taken credit of duty paid on inputs used for the manufacture of ‘stitch bonded glass fibre fabrics’ as clearly established in the findings of the adjudicating authority and in which the credit, subsequently taken on 20th September 2007 during the course of investigation, has been appropriated along with the further payment of ₹ 11,79,334/- made then. It is, thus, amply clear that CENVAT credit had been availed by an approximate formulaic calculation without itemwise ascertainment of utilization of inputs for manufacture of exempted products. The CENVAT credit available on such inputs had been taken and duly utilized for the discharge of the demand. The additional liability to the extent of ₹ 11,79,366/- for which CENVAT credit was not available also reinforces the hypothesis that, had the principle of non-availment of CENVAT credit on non-dutiable goods been followed, even this amount would not have been due. In the circumstances of discharge of the liability under rule 6(3) of CENVAT Credit Rules 2004 by availment of appropriate CENVAT credit, it would appear

that the differential recovery of ₹11,79,366/- should sustain. We, therefore, limit the liability of the assessee to this amount.

6. Learned Counsel for appellant made vehement arguments to contest the imposition of penalty as the demand does not lie entirely within the period of statutory limitation. We find that the imposition of penalty should be restricted to the amount held as recoverable *supra* and not to the quantum of liability for which CENVAT credit of inputs used in exempted materials was availed. Needless to say, discharge of this liability of ₹ 11,78,366/- would render the assessee eligible for the reduction provided in law if made within 30 days of receipt of this order.

7. On the finding *supra* in relation to the appeal of the assessee, we have held that the demand to the extent of CENVAT credit that had not been availed on inputs used for manufacture of exempted goods but entitled, subject to discharge of liability at the prescribed rate under rule 6(3) CENVAT Credit Rules, 2004, is not deniable.

8. The acceptance of the liability and the utilization of CENVAT consequently available would render the assessee clear of the liability to that extent. The Director of the company would not have derived any particular benefit or have been aware of the requirements of the rules. No evidence has been brought on record of any intention on the part of the respondent-Director to evade any liability or of having

taken any steps to facilitate such evasion. Considering the circumstances, we find that the impugned order was justified in dropping the proceedings against Shri PKC Bose.

9. In sum, appeal of Revenue is dismissed and the appeal of the assessee is allowed to the extent of confirmation of demand of ₹ 11,79,366/- and limiting of the penalty to that extent.

(Pronounced in Court)

(Dr. D. M. Misra)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

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