F.NO.195/488-506/12-RA

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F.NO.195/488-506/12-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE
NEW DELHI-110 066

Date of Issue: 3/4/13

ORDER NO.331-349/2013-Cx DATED 2.4.2013 OF THE GOVERNMENT OF INDIA, PASSED BY SHRI D. P. SINGH, JOINT SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION UNDER SECTION 35 EE OF THE CENTRAL EXCISE ACT, 1944

SUBJECT	:	Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 23-41/2012/Ahd-I/CE/MM/Commr(A)/Ahd dated 28.3.12 passed by Commissioner of Central Excise (Appeals-I), Ahmedabad
APPLICANT	:	M/s. Ashima Dyecot Ltd., Texcellence Complex Khokhara Mehmedabad, Ahmedabad
RESPONDENT	:	Commissioner of Central Excise, Ahmedabad-I

ORDER

These revision applications are filed by M/s. Ashima Dyecot Ltd., Ahmedabad, against the orders-in-appeal No.23-41/2012/Ahd-I/CE/MM/Commr(A)/Ahd dated 28.3.12 passed by Commissioner of Central Excise (Appeals-I) Ahmedabad.

2. The brief facts of the case are that the applicants are engaged in the business of manufacturing of cotton fabrics and man-made fabrics, falling under ch.Nos. 52 & 55. They exported cotton bleached and finished fabrics on payment of duty in term of notification No.29/2004-CE dated 09.07.2004 after having opted for full exemption under Notification No. 30/2004-CE dated 09.07.2004 and had filed rebate claim with Jurisdictional Assistant Commissioner Central Excise. The said rebate claim were sanctioned vide various order-in-original in 2010. Subsequently show cause notices were issued for recovery of aforesaid erroneously sanctioned rebate claims alongwith interest on following grounds:

(a) Since the applicant did not avail cenvat credit, they were compulsorily required to avail benefit of exemption of Notification No.30/2004-CE dated 9.7.04 and hence, the export of goods on payment of concessional rate of duty under Notification No.29/2004-CE dated 9.7.04 was not correct.

(b) It was further observed by the department that the applicant opted for full duty exemption w.e.f. 16.1.2006 under Notification No.30/2004-CE dated 9.7.04; therefore, credit available as on 16.1.2006 lapsed in terms of proviso to Rule 11 (3) of Cenvat Credit Rules, 2004 and hence, utilization of such lapsed credit was not correct.

(c) It was further held by the department that the applicant procured the raw materials duty free against advance licence scheme/DEEC Scheme and using

these duty free inputs, the final export goods were manufactured and exported. On account of absence of the duty paid nature of raw materials, the applicant was not entitled for cenvat credit.

Subsequently, the adjudicating authority confirmed the demand vide impugned orders-in-original issued in 2011as mentioned in Orders-in-Appeal. Against the said orders of the adjudicating authority, the applicant preferred appeals before the Commissioner (Appeals) who after considering all the submissions rejected the appeals and upheld the Orders-in-Original confirming demand of erroneously sanctioned rebate claims.

3. Being aggrieved by the impugned orders-in-appeal, the applicant has filed these revision applications under Section 35EE of Central Excise Act, 1944 before Central Government on the following grounds:

3.1 The basis of the rejection of rebate claim is that the utilization of cenvat for payment of excise duty was wrong. The cenvat should have lapsed under rule 11 as the applicant had opted for non-availment of cenvat as prescribed under notification No.30/2004 and accordingly the rebate is held as inadmissible. In this regard, it is submitted that for sanctioning rebate claim, the department has to verify the proof of exports like ARE-I, shipping bill EP copy, bill of lading and bank realization certificate. The adjudicating authority at time of sanctioning rebate claim, has verified the aforesaid aspect. Once proofs of exports are submitted and the claim of rebate is allowed, the authority cannot recover the same on the ground of payment of duty from wrong account. While deciding the present issue, the learned Commissioner has totally ignored the aforesaid provisions of rules. The claim of rebates is sanctioned under rule 18 of the Central Excise Rules. It is submitted that once the export of goods is established, the rebate cannot be denied on the ground that availment of credit was wrong. Credit availment and utilization are governed by Cenvat Credit Rules. In the present case, when there is no dispute regarding exports of goods, the rebate of the exported goods cannot be rejected relying on Cenvat Credit Rules which does not apply

to the facts of present case. Hence the order is bad in law and requires to be quashed and set aside.

3.2 The applicant further submits that original rebate claims were allowed by the adjudicating authority and no appeals have been preferred by the department against aforesaid orders. Hence the same has become final. The refund is sought to be recovered by issuance of show cause notices. It is submitted that the rebate orders have become final and hence recovery cannot be made by issuance of show cause notices unless appeals are filed against aforesaid rebate orders. The applicant had relied on various case laws on the aforesaid ground. However, the appellate authority has totally ignored aforesaid important submissions. Hence also, the order is bad in law and requires to be quashed and set aside.

3.3 It is further submitted that both the lower authorities have held that the duty payment was made from wrong account and hence the rebate is erroneously sanctioned. It is the view of the department that Cenvat credit lying unutilized shall lapse on opting for full exemption of duty under notification No.30/2004 For the purpose the authority relies on Cenvat credit rule 11 (3). It is submitted that aforesaid rule 11 is not applicable in the facts and circumstances of the case. The rule 11 is reproduced in para 6.2 of the order-in-appeal. It is submitted that for arriving at conclusion that the unutilized Cenvat credit shall lapse, the Commissioner has relied on sub-rule 3 (ii) of Rule 11. In this regard, it is submitted that the said sub-rule 3(ii) is applicable only if the goods are exempted absolutely. However, in the present case, the goods are not exempted in absolute terms. It is submitted that any exemption subject to a condition cannot be held as absolute exemption. It is to be considered as a conditional exemption. Hence, it is submitted that the Cenvat lying unutilized shall not lapse as provided under rule 11 (3). This aspect stands clarified by the departmental circular also which prescribes that a manufacturer has an option to simultaneously avail benefit of both the notifications. It is submitted that if a manufacturer avails benefit of both the notifications simultaneously, then, definitely in those cases some credit will

always remain unutilized or in balance in Cenvat credit account of the manufacturer. Hence, the view canvassed by the appellate authority is contrary to the view of the department which is laid down by the Circular.

3.4 Further, it is submitted that the applicant had started availing benefit of notification No.30/2004 for domestic clearances with effect from 16.1.2006. On the aforesaid credit, the remaining unutilized credit can be carried forward by the applicant in their books of accounts. As the department themselves permit simultaneous availment of both the notifications, the same can be utilized in future whenever the manufacturer clears any goods under Notification No. 29/2004. The credit lying unutilized can be carried forward for indefinite period as Cenvat credit is a vested and legal right. The department is relying on rule 11 of the Cenvat Credit Rules. However, it is submitted that rule 11 was inserted in the statute only on 1/3/2007 and hence, the same cannot be applied to the credit which is lying in balance prior to insertion of rule 11 (3). The said rule is prospective in nature. The aforesaid view is ratified by the Honourable Karnataka High Court. The applicant had relied on the decision of Honourable Karnataka High Court. However the same is totally ignored by the appellate Commissioner. Hence also the order is bad in law and requires to be quashed and set aside.

3.5 Further, the applicants were availing Cenvat on raw-materials which was lying unutilized in their account due to exports of goods. The applicants further submit that credit lying unutilized in their account is an accrued right as held by the Honourable Supreme Court in the case of Eicher Motors Limited vis. Union of India, reported at [1999 (106) ELT 3] and case reported in [1999 (112) ELT, 353] the case of M/s Dai Ichi Karkaria Limited that right cannot be taken away by any subsequent legislation. It is submitted that the contention that the credit should lapse under rule 11 is misconceived and also against the settled principles of law laid down by the Honourable Supreme Court in the aforesaid two cases. It is submitted that even rule 11 does not say that the credit lying unutilized shall be lapsed if the manufacturer clears any goods under

exemption. It is submitted that as per rule 11, the credit shall lapse only if a manufacturer avails benefit of value based exemption notification or the goods are absolutely exempted. Hence, it is incorrect to hold that the credit lying unutilized in the applicant's account shall lapse on account of opting for benefit of exemption notification No.30/2004. Hence, it is submitted that the order is bad on this count also and requires to be set aside.

3.6 the present case, notification No.30/2004 exempts textile articles subject to non-availment of Cenvat credit on raw-material. Further, notification No.29/2004 prescribes reduced rate of duty without any condition. However, it is nowhere prescribed that for availment of notification No.29/2004 Cenvat shall have been availed on any of the raw-material or capital goods or input services. By rejecting the aforesaid rebate, both the lower authorities are fastening additional conditions for availment of notification *No.29/2004*. It is submitted that the aforesaid view is against the settled principles of law that taxing statutes have to be strictly construed and it is impermissible for any authority to either add or alter or delete any word over and above what is laid down by the statute. By rejecting the aforesaid claim on the ground that no Cenvat is availed on raw-material and accordingly benefit of notification No.29/2004 is not admissible, the appellate authority has brought in additional conditions in the aforesaid notification which is beyond jurisdiction and impermissible under the law and hence also the order is required to be quashed and set aside.

3.7 Further, it is submitted that the applicant had relied on the decision of Revisional Authority in the case of M/s. Auro Spinning Mills Limited, reported at 2012 (276) ELT, 134 (GOI). In para 12 of the above order the Govt. has clearly held that there is no condition to avail Cenvat credit of duty paid on inputs for availing notification No.29/2004. However, the appellate Commissioner has totally disregarded the aforesaid decision. Hence also, the Commissioner has erred in law.

3.8 The applicant had relied on decision of the Tribunal in the case of M.s Raymond Limited reported at 2011 (273) ELT 582 in which under similar circumstances, cash

refund was allowed by the Tribunal. It was submitted that if cash refund in case of unutilized Cenvat credit is permissible, then under no circumstances, it can be held that the credit lying unutilized shall lapse. However, the Commissioner has strangely not dealt with the aforesaid order also. Hence also the order is bad in law and requires to be quashed and set aside.

3.9 It is also submitted that the applicants had cleared the aforesaid goods by claiming benefit of Notification No.29/2004 on payment of duty. The applicant had also filed their returns in time showing clearance under Notification No.29/04. These returns have also been assessed by the department and no objection against payment of duty has been taken. Again, the ARE-J forms for exports were filed within 24 hours of removal with the departmental authority. No objection against such payment was taken at all by the department. Hence, department cannot hold the payment of duty as irregular and reject the claim of rebate. On this ground also, the rejection is bad in law.

4. The applicant preferred a Special Civil Application No.13737/12 before Hon'ble Gujarat High Court against the recovery proceedings initiated by the department pursuant to impugned orders-in-appeal. The Hon'ble High Court vide order dated 30.1.2013 directed Joint Secretary (Revision Application) to decide these revision applications filed by the applicant against impugned orders-in-appeal within three months of date of receipt receipt of Hon'ble High Court's order. Accordingly, in compliance of Hon'ble High Court's direction, personal hearing was fixed on 20.3.2013. Shri Nirav Shah, Advocat and Shri H.S.Rajput, General Manager (Excise) attended hearing on behalf of applicants and reiterated grounds of revision applications. They also relied upon Hon'ble Karnataka High Court order dated 11.4.2011 on CEA No.109 of 2009 in the case of CCE, Bangalore-II Vs. Gokaldas Intimate Wear reported in 2011 (270)ELT 351(Kar), CESTAT order in case of CCE Banglore-II Vs. Mother diary 2009 (245) ELT – 413 (T-Bang), CCE Chandigarh Vs. Saboo Alloys Pvt. Ltd. 2008 (228) ELT 422 (T-Delhi). They have also relied upon G.O.I. Revision Order No. 222-312/10-Cx dated 13.02.2010 in the case of M/s Nahar Industrial Enterprises Ltd 2012 (283) ELT 444(G.O.I.) and in the case of Auro Spinning Mills 2012(276) ELT 134 (GOI). Nobody

7. In this case, the lower authority have observed that the applicant having not availed cenvat credit, were compulsorily required to avail complete exemption of duty under Notification No.30/2004-CE and hence, the export of goods under Notification No.29/2004-CE was not correct. In this regard Government observes that the Notification No. 29/2004-C.E., dated 9-7-2004, grants partial exemption to goods manufactured and duty is chargeable @ 4% or 8%, and Notification No. 30/2004-C.E., dated 9-7-2004 grants full exemption from payment of central excise duty, subject to the condition that no cenvat credit is taken on the inputs consumed in the manufacture of final product. The applicants could avail both the aforesaid Notifications simultaneously in terms of clarification issued by the C.B.E.C. vide. its Circular No. 795/28/2004-CX., dated 28-7-2004. The basic condition for availing exemption under Notification No. 30/2004-C.E., dated 9-7-2004 was that the applicant is not allowed to take Cenvat Credit on the inputs utilized for manufacturing/processing of the finished goods. Whereas for availing benefit under Notification No. 29/2004-C.E., dated 9-7-2004, there was no such condition of availing or not availing of the Cenvat Credit on the inputs utilized for manufacturing/processing of the finished goods.

7.1 As per Board Circular No. 795/28/2004-CX dated 28-7-2004, the manufacturer can avail both the Notifications No. 29/2004-C.E., and 30/2004-C.E., both dated 9-7-2004 simultaneously provided the manufacturer maintains separate set of accounts for goods in respect of which benefit of Notification No. 29/2004-C.E., dated 9-7-2004 is availed and similarly, for goods in respect of which benefit of Notification No. 30/2004-C.E., dated 9-7-2004 is availed. The C.B.E.C. further issued a Circular No., 845/3/2006-CX., dated 1-2-2007 to clarify the provision of simultaneous availment of Notification Nos. 29/2004-C.E., and 30/2004-C.E., both dated 9-7-2004 wherein it has been clearly mentioned that non-availment of credit on inputs is a pre-condition for availing exemption under this Notification (30/2004-C.E., dated 9-7-2004) and if manufacturers avail input cenvat credit, they would be ineligible for exemption under this Notification (30/2004-C.E., dated 9-7-2004). However, Board further allowed the availment of

proportionate credit on the inputs utilized in the manufacture of goods cleared on payment of duty (under Notification No. 29/2004-C.E., dated 9-7-2004) should be taken at the end of the month only.

7.2 During the relevant period, the applicants cleared the goods for export after paying the concessional rate of excise duty 4% or 8% in terms of Notification No. 29/2004-C.E., dated 9-7-2004 and filed rebate claims under Rule 18 of the Central Excise Rules, 2002. The applicants were not availing the cenvat credit on the inputs used in the manufacture of the exported goods. They were entitled to avail both the Notification 29/2004-CE and 30/2004-C.E., simultaneously provided they followed the provisions of above said CBEC Circulars. The lower authorities have drawn conclusion that as the applicants were not claiming the cenvat credit on the inputs used in the manufacture of the exported goods, hence they were working under exemption Notification No 30/2004-C E., dated 9.7.2004. This conclusion of lower authorities is without any basis. Moreover, the option is with the manufacturer to avail or not to avail cenvat credit on the inputs as the availment of cenvat credit is a beneficial scheme and there is nothing in the Notification No. 29/2004-C.E., dated 9-7-2004 for the manufacturer to compulsorily avail cenvat credit on the inputs There is bar only on for-availment of Cenvat input credit under Notification No 30/2004-C E , dated 9-7-2004. As such, the lower authorities have erred in holding that the applicants having not availed cenvat credit will have to opt for exemption under Notification No.30/2004-CE and can not pay duty under Notification No.29/2004-CE. Applicant has relied upon GOI Revision orders in the case of Nahar Ind. Enterprises Ltd. 2012 (283) ELT 444 (GOI) and Auro Spinning Mills 2012 (276) ELT 134 (GOI). The said orders were not considered by lower authorities at all.

8. Applicant has contended that department has not reviewed the initial Order-in-Original under which rebate claims were sanctioned. It is not legally permissible for the department to initiate proceedings under section 11A of Central Excise Act, 1944

without reviewing the Order-in-Original under section 35 E of Central Excise Act, 1944. In this regard it is relevant to rely on the judgment of Hon'ble High Court of Bombay in the case of M/s. Indian Dye Stuff Industries Ltd. Vs. UOI 2003 (161) ELT 12 (Bom.). In the said judgment it is held that section 11A if Central Excise Act 1944 being an independent substantive provision, the appellate proceedings are not required to be initiated before issuing Show Cause Notice under section 11A if there are grounds existing such as short levy, short recovery or erroneous refund etc. Section 11A is an independent substantive provision and it is a complete code in itself for realisation of excise duty erroneously refunded. There are no pre conditions attached for issuance of notice under section 11A for recovery of amount erroneously refunded. This decision of Bombay High Court has been upheld by Hon'ble Supreme Court reported as 2004 (163) ELT A 56 (SC) where Supreme Court has held that recovery of duty erroneously refunded is valid in law under section 11A of Central Excise Act and there is no need of first filing the appeal against the order by which refund was erroneously sanctioned. Following case law also laid down the same principles.

8.1 In the case of Union of India Vs. Jain Shudh Vanaspati Ltd. [1996 (86) ELT 460 (SC), the apex court has held in paras 5,6 & 7 as under:

" 5. It is patent that a Show Cause Notice under the provisions of section 28 for payment of Customs duties not levid or short-levied or erroneously refunded can be issued only subsequent to the clearance under section 47 of the concerned goods. Further, section 28 provides time limits for the issuance of the Show Cause Notice there under commencing from the "relevant date"; "relevant date" is defined by sub-section (3) of section 28 for the purpose of section 28 to be the date on which the order for clearance of the goods has been made in a case where duty has not been levied; which is to say that the date upon which the permissible period begins to run is the date of the order under section 47. The High Court was, therefore, in error in coming to the conclusion that no Show Cause Notice under section 28 could have been issued until and unless the order under section 47 had been first revised under section 130. "

8.2 While referring to the above mentioned case law in the case of Collector of Central Excise, Bhubaneshwar vs. Re-Rolling Mills [1997 (94) ELT 8 (SC)], the Hon'ble Supreme Court has held as under:

" *The learned counsel for the parties do not dispute that this appeal is covered by the decision of this court in Union of India & Ors. V. Jain Shudh Vanaspati Ltd. & Anr.- 1996 (86) ELT 460 (SC)= (1996) 10 SCC 520. In that case the court was dealing with section 28 of the Customs Act which is in pari materia with section 11A of the Central Excise Act. The said decision is thus applicable to the present case also. For the reasons given in the said judgment, the appeal is dismissed with no order as to coasts.* "

8.3 In I T I Ltd. Vs. Commissioner of Customs, ACC, Mumbai [2008 (228) ELT. 78 (Tri. Mumbai)] it has been held:

" *11. We hold that the issue of Show Cause Notice under section 28 of the Customs Act, 1962 for recovery of the erroneously granted refund is sufficient to meet the requirement of law. Following the ratio of the Hon'ble Supreme Court judgments in the case of Re-Rolling Mills and Jain Shudh Vanaspati cited supra and the Tribunal's order in the case of Roofit Industries Ltd., we hold that the proceedings initiated under section 28 of the Customs Act, 1962, are not vitiated on the ground of non-filing of appeals by the Revenue against the orders No. 72 dated 01-03-1994 and 99 dated 11-03-1994 passed by the Assistant Commissioner. Therefore, the demand of erroneous refunds under section 28 of the Customs Act, 1962 is sustainable.* "

8.4 In Roofit Industries Ltd. Vs. Commissioner of Central Excise, Chennai- 2005 (191) ELT. 635 (tri. Chennai) it has been held as follows:

" *4..... We follow this precedent and apply the ratio of the Supreme Court's decision in Jain Shudh Vanaspati (Supra) to the facts of the instant case and, accordingly, reject the appellants' contention that a Show Cause Notice demanding erroneously refunded duty*

could not be issued under section 11A without revision/review of the refund order. No other issue has arisen from the submissions made in this case. "

8.5 In view of the principles laid down in above said judgments, Government holds that the erroneous refund/ rebate sanctioned under an order can be recovered by invoking provisions of section 11A of Central Excise Act 1944, without taking recourse to provisions of section 35 E ibid and fling appeal against the order under which refund was initially sanctioned.

9. Government notes that the lower authorities observed that the applicants procured the raw materials duty free under advance licence scheme, DEEC scheme and final export goods were manufactured from such duty free inputs. On account of absence of duty paid nature of the raw materials, the applicant was not entitled to cenvat credit. In this regard, Government observes that in their reply to show cause notice issued by the department for recovery of already sanctioned rebate claims, the applicant submitted that they were maintaining separate account for deemed credit and actual credit; that on 31.3.2003 the applicants had an unutilized amount Rs.28,43,967/- in their deemed credit, which was totally reversed by them by debit entry; that after 1.4.2003 the credit was admissible to manufacturer only on the basis of duty paying documents and hence, the credit lying unutilized was on account of various raw-materials procured on payment of duty and that the records of applicants audited upto December 2006 and no observation regarding availment of wrong credit was ever made by central excise authority. The lower authorities have not given clear finding on the aspect whether the Cenvat Credit lying in balance was availed on the basis of proper duty paying documents. The proper availment of Cenvat Credit in respect of balance credit is required to be verified by original authority from the relevant records to arrive at arrive at proper and just conclusion.

10. Government observes that the applicant availed cenvat credit during 10.9.2004 to 16.1.2006 on raw materials and cleared their goods on payment of duty to domestic

market and under bond for exports the duty stands accumulated in their cenvat account due to the fact that the applicant had made exports under Bond and the said credit was lying unutilized as the applicant did not opt of refund of such accumulated credit under Rule 5 of cenvat credit rules, 2004. The applicant w.e.f. 17.1.2006 opted for clearance under Notification No.30/2004, at this time also they reversed proportionate credit on goods lying in balance. Even after debiting proportionate amount in raw materials lying in factory on 16.1.2006, they were having balance in their cenvat account. These factual details were not controverted by the lower authorities.

10.1 Government observes that original authorities have held that as per provisions of Rule 11 of the Cenvat Credit Rules 2004, the unutilized credit lying in balances lapses on the date on which the manufacturer commences clearance by availment of duty exemption under Notification No.30/2004-CE. The applicant opted for full exemption under Notification No.30/2004-CE on 16.1.2006 and hence, by virtue of cenvat credit Rules 2004, Rule 11, sub-rule(3) the cenvat credit lying in the balance, lapsed on 16.1.2006 and hence, they cannot utilize the same for the purpose of payment of duty for export under rebate.

10.2 Government observes that provision contained in Rule 11(3) of the Cenvat Credit Rules 2004 reads as under:

"Rule 11 (3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if,-

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or

(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."

It is noted that applicant has availed exemption from whole of duty of excise during the relevant period and therefore, Department is contending that Cenvat Credit lying in balance would lapse in terms of Rule 11(3).

10.3 Government observes the applicant has relied upon judgement of Hon'ble Karnataka High Court order dated 11.4.2011 on CEA No.109 of 2009 in the case of CCE, Bangalore-II Vs. Gokaldas Intimate Wear reported in 2011 (270)ELT 351(Kar), CESTAT order in case of CCE Banglore-II Vs. Mother diary 2009 (245) ELT – 413 (T-Bang) and CCE Chandigarh Vs. Saboo Alloys Pvt. Ltd. 2008 (228) ELT 422 (T-Delhi) and contended that rule 11(3) of Cenvat Credit Rule 2004 inserted w.e.f. 01.03.2007 vide Notification No. 10/07-CE(NT) dated 01.03.2007 and therefore its provision can not be made applicable to impugned Cenvat Credit balance as on 16.01.2006.

10.3.1 Hon'ble Karnataka High Court in case of M/s Gokaldas Intimate Wear 2011 (270) ELT 351 (KAR) has observed as under:

> ***"5.*** *It was pointed out to us that in the year 2008 (sic) sub-rule (3) was inserted by a Notification No. 10/2007 with effect from 1-3-2007, which reads as under :-*
>
> *"(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -*
>
> *(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under section 5A of the Act; or*
>
> *(ii) the said final product has been exempted absolutely under section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."*
>
> ***6.*** *Therefore, it is clear from the aforesaid. Rule that till 1-3-2007, the assessee was entitled to benefit, of the cenvat credit in respect of inputs contained in the work in progress and semi finished products. The said amendment is prospective in nature. It comes into effect from only 1-3-2007. In the instant case, the period is anterior to 1-3-*

2007, which has no application. Therefore, the substantial questions of law raised in this appeal are answered in favour of the assessee and against the revenue."

In above judgements, it has been clearly held that the said Rule 11(3) came into effect only from 1.3.2007 and effect of the same is prospective.

10.3.2 Hon'ble CESTAT in the case of CCE Banglore-II Vs. Mother Diary 2009 (245) ELT 413 (T-Bang) has observed as under:-

"8. On a very careful consideration of the issue, we find that this Bench had already taken a view in some of the decisions that once input credit is taken legally, then the same cannot be denied after the issue of exemption notification on the final products. We do not want to differ from such a view at this stage. If the ratio of this decision is applied, they would not be any necessity to withhold or deduct the amount due to the respondents. In other words there was no need for reversal of input credit lying in stock and also in the finished goods. Further, our attention was brought to amendment made in Cenvat Credit Rules, 2004 wherein sub-rule 11(3A) has been introduced. The effect of this amendment is that when a product on which input Cenvat Credit taken is exempted by way of a Notification, then the input credit lying in stock and contained in the finished goods should be necessarily reversed. It was argued that this provision came into effect from 1.3.2007. The period in the present case is prior to 1.3.2007. On this ground also the action of the Original Authority cannot be sustained. Therefore, there was no merit in the revenue's appeal. The same is dismissed."

10.3.3 Hon'ble CESTAT in the case CCE Chandigarh Vs. Saboo Alloys Pvt. Ltd. 2008 (228) ELT 422 (T-Del) has also taken the same view.

10.3.4 Government notes that none of the above said judgements were considered by lower authorities while passing orders. The applicability of said judgement has to be considered by the authority and finding is required to be given after considering the same. As such these orders suffer from legal infirmity and case is required to be remanded back for fresh consideration.

11. In view of above discussions Government set asides the impugned orders, and remands the cases back to original authority to decide the issue afresh keeping in mind observation made in forgoing paras and by considering the above said case laws. A reasonable opportunity of hearing will be afforded to both the parties.

11. Revision applications are disposed of in above terms.

12. So ordered.

(D.P. Singh)
Joint Secretary (Revision Application)

M/s. Ashima Dyecot Ltd., Ahmedabad
Texcellence Complex, Khokhara
Ahmedabad – 380 021

(Attested)

(भगवान शर्मा/Bhagwan Sharma)
सहायक आयुक्त/Assistant Commissioner
C.E.C.-O.S.D (Revision Application)
वित्त मंत्रालय (राजस्व विभाग)
Ministry of Finance (Deptt of Revn)
भारत सरकार/Govt of India
नई दिल्ली/New Delhi

F.NO.195/488-506/12-RA

Order No. 331-349/2013-Cx dated 02.04.2013

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(B.P.Sharma)
OSD (Revision Application)