2012 (2) ECS (97) (Tri-Del)

IN THE CUSTOMS EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK No.2, R.K. PURAM, NEW DELHI-110066
PRINCIPAL BENCH, NEW DELHI, NEW DELHI,
COURT NO.1

M/s Sheena Exports
Vs.
Commissioner of Central Excise, Rohtak

Date of hearing: 23.8.2012
Date of Decision: 19.09.2012

Excise Appeal No.E/2712/07
M/s Sheena Exports — Appellants
Vs.
CCE, Rohtak — Respondent

(Arising out of the Order No.19/COMMR/RP/07/CE Dated 10.07.2007 passed by the Commissioner Central Excise, Rohtak)

Appeal No E/706/08
M/s Sheena Exports — Appellants
Vs.
CCE, Rohtak — Respondent

(Arising out of the Order-in-Appeal No.509/KKG/RTK/2007 Dated 20.12.2007 passed by the Commissioner Central Excise (appeals), Delhi-III.

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

Appearance
Sh. A.R. Madhav. Rao, Advocate – for the Appellant
Sh. Davinder Singh, Joint CDR – for the Respondent

FINAL ORDER NO.A/1170-1171/2012-EX (BR)

"The goods initially cleared from the factory for home consumption and thereafter exported out of India cannot be equated with the goods exported directly from the factory under bond in terms of provision of Rule 19 of Central Excise Rule. In view of this, the Appellant's plea that if the duty is charged on dyed cotton yarn its Cenvat Credit would be available to the Appellant, which would be refundable to them under Rule 5 of the Cenvat Credit Rules, is not acceptable." [Para 6]

Per Rakesh Kumar

1. Since both the Appeals involve common facts and common issues, though arising out of different orders, the same were heard together and are being disposed of by a common order. The facts giving rise to these appeals are, in brief, as under:-

1.1 Both the appellants manufacture cotton handloom rugs (Durries) from cotton yarn, For manufacture of cotton rugs, the cotton yarn is subjected to dyeing and the dyed yarn is used in the manufacture of cotton handloom rugs which are fully exempt from duty. The dyed cotton yarn is an excisable item. The Department was of the view that since the cotton handloom rugs are fully exempted from duty, the dyed cotton yarn used captively in the manufacture of cotton rugs would not be exempt from duty under Notification No.67/95-CE and therefore the appellant should have paid duty on the dyed cotton yarn manufactured by them and cleared of captive consumption within their factory. On this basis the Show Cause Notices were issued to both the appellants for demand of duty in respect of clearance of dyed cotton yarn for captive consumption during the period from 01.03.2003 to June'03. The duty demanded from M/s. Sheena Exports was Rs. 51,56,820/- and the duty demanded from M/s. Sheena Industries was Rs. 19,00,874/-

1.2.1 The case against M/s Sheena Exports was adjudicated by the Commissioner Central Excise, Rohtak Vide Order in original dated 10.07.2007 by which he confirmed the duty demand of Rs.51,56,820/- along with interest and imposed Penalty of equal amount on the appellant. Against this order of the Commissioner appeal No. - E/2712/07 has been filed.

1.3 The case against M/s Sheena Industries was adjudicated by the Joint Commissioner Vide Order in original dated 30.11.2006 by which the duty demand of Rs.19,00,574/- was confirmed against them along with interest and besides this, penalty of equal amount was imposed u/s 11AC of Central Excise Act. This order of the Joint Commissioner was upheld by the Commissioner Central Excise (Appeals), Delhi-III Vide Order in appeal dated 20.12.2007, against which the Appeal No.-E/706/08 has been filed.

2. Heard both the sides;

3. Sh. A.R. Madhav Rao, Advocate, the learned counsel of the appellants, pleaded that though dyed yarn has been used captively in the manufacture of cotton handloom rugs which are fully exempt from duty, the entire quantity of cotton rugs cleared from the factories of the appellants had been exported out of India, that in view of this, the goods should be treated as having been exported under bond and therefore, the proviso to Notification No. 67/95-CE would not be applicable and no duty would be chargeable on the clearance of dyed cotton yarn

for captive consumption, that the goods exported out of India without payment of duty cannot be treated as the goods exempted from duty, that in any case, even if the duty had been paid on the dyed cotton yarn, since the same has been used as input in the manufacture of cotton rugs which had been exported out of India, the Cenvat Credit of the duty paid on dyed cotton yarn would be admissible, which would be refundable in cash, in terms of the Provisions of Rules 5 of Cenvat Credit Rules'2004, that in this regard he relies upon Hon'ble Bombay High Court's judgment in the case of Repro India Limited Vs. Union of India reported in 2009 (235) ELT-614 (Bombay), and that in view of these submissions, the impugned order is not correct.

4. Sh. Davinder Singh, the Learned Joint CDR defending the impugned order by reiterating the findings of the Commissioner in it, pleaded that since there is no dispute that dyed cotton yarn had been used in the manufacture of cotton handloom rugs which are fully exempted from duty, the dyed cotton yarn would not be exempt from duty under Notification No. 67/95-CE, and that since the cotton handloom rugs had not been exported under bond under Rule 19 of the Central Excise Rules, the Cenvat Credit of duty paid on the dyed yarn would not be available and hence, there is no question of permitting its cash refund under Rule 5 of the Cenvat Credit Rule. He therefore, pleaded that there is no infirmity in impugned orders passed by the Commissioner Central Excise, Rohtak and Commissioner Central Excise (Appeals), Delhi-III.

5. We have considered the rival submissions. There is no dispute that the goods, in question, dyed cotton yarn are covered by the table annexed to Notification No. 67/95-CE. The point of dispute is about the proviso to this exemption Notification which reads as under:-

"Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise or additional duty of excise leviable thereon or are chargeable to nil rate of duty, other than those goods which are cleared :-

i) to a unit in a Free Trade Zone, or

ii) to a hundred percent Export Oriented Under taking or

iii) to a unit in an Electronic Hardware Technology Park, or

iv) to a unit in a Software Technology Park, or

v) under notification No. 108/95- Central Excise dated 28th August, 1995 or

vi) by a manufacturer of dutiable and exempted final products, after discharging the obligation prescribed in rule 6 of the CENVAT Credit Rules, 2001.

From a plain reading of the Proviso to Notification No. 67/95-CE it would be clear that:-

(i) the exemption under this notification to intermediate products used captively for the manufacture of some final product is not available when the final product is fully exempt from the duty or is chargeable to nil rate of duty, and

(ii) the above bar would not be applicable when the final products are cleared without payment of duty to –

(a) a unit in the trade zone; or

(b) a hundred percent export Oriented Undertaking, or

(c) a unit in an Electronic Hardware Technology Park, or

(d) a unit in an software Technology Park, or

(e) under Notification No.108/95-CE dated 28.08.95 to United Nation or its Organizations or to the projects funded by the United Nation or International Organization, as this bar would also be inapplicable when the final product is cleared along with other dutiable final products manufactured out of common cenvated inputs and in respect of the exempted final product, the provisions of Rule 6 of Cenvat Credit Rules have been complied.

In this case none of the above conditioned are satisfied, as the exempt goods have simply been cleared into Domestic Tariff area, by availing full duty exemption.

6. Another plea of the appellants is that even if the duty is charged on the dyed yarn, the same would be admissible as Cenvat Credit as dyed yarn was used for manufacture of cotton rugs which had been exported out of India. We do not agree with this plea of the Appellants, as this plea would be acceptable only when the exports of final products had been made under bond in terms of the provisions of the Rule 19 of Central Excise Rule'2002. In this case the cotton rugs have been cleared into Domestic Tariff Area by availing full duty exemption and it is not the claim of the Appellants that the same had been exported under bond directly from the factory. The goods initially cleared from the factory for home consumption and thereafter exported out of India cannot be equated with the goods exported directly from the factory under bond in terms of provision of Rule 19 of Central Excise Rule. In view of this, the Appellant's plea that if the duty is charged on dyed cotton yarn its Cenvat Credit would be available to the Appellant, which would be refundable to them under Rule 5 of the Cenvat Credit Rules, is not acceptable. In our view the judgement of Hon'ble Bombay High Court, in case of Repro India Limited (Supra) cited by the Appellants is not applicable for the facts for this case.

7. In view of the above discussion, we do not find any merit for these appeals. The same are dismissed.