

**Central Excise Updates- August 2009**

**Case Laws:**

**1. *M/s Sanjivani SSK Ltd vs. Commissioner of Central Excise: 2009-TIOL-1164-CESTAT-MUM***

**Facts:** The appellant took Cenvat Credit of duty paid on molasses by manufacturer when the liability to pay was on the procurer vide Rule 4(2) of Central Excise Rules 2002. Manufacturer paid duty which was never refunded.

**Issues:** The department took the view that appellant is not entitled to Cenvat Credit of duty paid by manufacturer liable to be paid by them as procurer.

**Decision:** The benefit of credit is covered by Board's Circular which says a manufacturer of final products can avail credit on inputs when duty is paid. The credit taken is therefore in order.

**2. *The Commissioner of Central Excise & Customs, Hyderabad-M Division vs. M/s Jay Engineering Works Ltd: 2009-TIOL-1173-CESTAT-BANG***

**Facts:** The assessee is clearing electric fans to various government departments against purchase orders. Valuation is done u/s 4A though retail sale is not involved in all such cases.

**Issues:** In accordance with the Standards of Weights and Measures Act 1976 there is no need to print MRP on sold fans as they remain property of the government department.

**Decision:** Authorities implementing the Standards of Weights and Measures Act have clarified that transaction falls in ambit of Packaged Commodities Rules so rate charged will be retail sale price less abatement required to be given as per the law.

**3. *M/s Nicco Corporation Ltd Vs. Commissioner of Central Excise ,Kol-III:  
2009-TIOL-1198-CESTAT-KOL***

**Facts:** The assessee cleared wires and cables to two customers without payment of duty by availing the benefit of exemption notification no.64/95 dt.16.3.95.This was availed based on certificates issued by respective customers that the goods would be supplied as stores on board a vessel of Indian Navy or Coast Guard.

**Issues:** The goods supplied were not put to intended use as per said notification.

**Decision:** Certificate obtained from ship builder are found incorrect inasmuch as impunged goods cleared have not been supplied as stores on board a vessel of Indian Navy.

**4. *Commissioner of Central Excise & Customs, Aurangabad Vs. Gaurav Agro Papers: 2009-TIOL-1254-CESTAT-MUM***

**Facts:** Cenvat Credit was availed on final product originally cleared to customer on payment of duty and returned by them under the cover of letter. Credit taken on strength of covering letter.

**Issues:** Letter is not valid document for the purpose of availment of Cenvat Credit under Rule 9.

**Decision:** Where rule provides a prescribed procedure for manufacturers to avail cenvat credit then the same should be invariably followed.

**Comment:** Credit could possibly have been taken on the triplicate copy of own invoice.

**5. *CCE, Rajkot Vs. M/s Mahalaxmi Extrusions: 2009-TIOL-1243-CESTAT-AHM***

**Facts:** Capital goods are received in factory and under Rule 4 of Cenvat Credit Rules 2004 50% of duty paid has been taken as cenvat credit and on balance of Cenvat Credit of which credit was not taken in first year, depreciation under Income Tax Act is availed.

**Issues:** Cenvat Credit under Rule 4(4) shall not be allowed in respect of that part of value of capital goods which represents duty on such capital goods when depreciation is claimed under the Income Tax Act, Section 32.

**Decision:** There is nothing in the Rules which debars the appellant from availing depreciation on balance 50% of duty which is not availed as Cenvat Credit.

**6. *M/s Hindustan Zinc Ltd Vs. Commissioner of Central Excise & Customs, Vishakapatnam :2009-TIOL-1249-CESTAT-BANG***

**Facts:** Appellant manufactures zinc ingots, sulphuric acid, cadmium. They utilize Cenvat Credit on inputs namely calcine, zinc dust that are found short.

**Issues:** Credit has been availed irregularly.

**Decision:** The shortages are reasonable in process of manufacture and duty cannot be demanded on inputs lost during the process of manufacture.

**7. *Chief Commissioner of Central Excise, Kol-III Vs. M/s Paul Aquamin & Food Pvt Ltd: 2009-TIOL-1290-CESTAT-KOL***

**Facts:** Respondent manufactures packaged drinking water and does not use the brand name of Mother Dairy and therefore their product is classifiable under sub-heading 2201.11 attracting nil rate of duty.

**Issues:** Indicated on the label that packaged drinking water is marketed by Mother Dairy, Calcutta.

**Decision:** Label merely indicates the party marketing the product. The appeal is rejected.

**8. *M/s Maruthi Suzuki Ltd Vs. Commissioner of Central Excise, Delhi-III : 2009-TIOL-94-SC-CX***

**Facts:** Assessee cleared part of electricity generated in factory to joint ventures, vendors. It claimed full cenvat credit on inputs namely naphtha used to generate electricity.

**Issues:** The said inputs are used for the purpose of generation of electricity partly consumed outside the factory of production.

**Decision:** Assessee is entitled to credit on eligible inputs, used in the generation of electricity to the extent used for captive consumption.

**9. *Commissioner of Central Excise , Aurangabad Vs. M/s Shayona Pulp Conversion Mills Pvt Ltd;2009-TIOL-1333-CESTAT-MUM***

**Facts:** Respondents manufacture kraft paper and avail cenvat credit on duty paid plastic bhusa.

**Issues:** Contention of the department is that plastic bhusa cannot be treated as fuel and is not entitled for cenvat credit and in respect of its use permission from the Maharashtra Pollution Control Board has not been secured.

**Decision:** On perusal of records respondents have consumed plastic bhusa for steam generation to manufacture kraft paper and there is no force in the department contention that respondents were not having necessary statutory permission to use bhusa as fuel.

**10. The Commissioner of Central Excise, Ludhiana Vs. M/s Nestle India Ltd  
Punjab: 2009-TIOL-447-HC-P&H-CX**

**Facts:** The respondents manufacture both excisable and exempted goods and are availing full Cenvat Credit on furnace oil used as inputs in the manufacturing process.

**Issues:** It is liable to pay 8% price of exempted goods vide Rule 6(3)(b) of the Rules.

**Decision:** Where the inputs are intended to be used as fuel Rule 57CC (9) of the Excise Rules would not apply and assessee can avail credit of fuel even though part of it is used to manufacture exempted final products.

**11. CCE, Vadodara-II Vs. M/s Danke Products, M/s Danke Transformers ,M/s  
Purvam Transformers (I)Pvt Ltd:2009-TIOL-1337-CESTAT-AHM**

**Facts:** Respondents manufacture electrical transformers. The appellants repair the same during the warranty period free of charge. The respondents entrusted this work to DEL and service tax in the bill raised availed as cenvat credit by respondents.

**Issues:** Whether the availment of service tax on repair and maintenance services done by third party agency on behalf of manufacturer is correct or not?

**Decision:** The service is covered by definition of input services and respondent is entitled to cenvat credit of service tax on such services.

**12. M/s Chamunda Pharma Machinery Pvt Ltd Vs. CCE, Ahmedabad :2009-  
TIOL-1358-CESTAT-AHM**

**Facts:** The appellants exported pharmaceutical machines to Nepal. Due to political unrest in Nepal at the time the goods could not be actually delivered to Nepal based customers.

**Issues:** In terms of Notification No.45/01-CE (NT) goods are not exported within 6 months from date of clearance and assessee has to deposit duty involved therein.

**Decision:** The denial of refund of duty paid by appellant on the admittedly exported goods is not in consonance with export scheme and the intention of legislature to boost export.