

Central Excise Updates – March 2009

1. Rule 14 A has been inserted in Pan Masala Packing Machines (Capacity determination and collection of duty) amendment rules 2009, with effect from 5th March 2009 which states that “ Notwithstanding anything contained in these or central excise rules 2002 no notified goods such as pan masala containing tobacco commonly called as gutkha shall be exported without payment of duty or any materials shall be removed without payment of duty from the factory or ware house or any other premises for use in manufacture or processing of notified goods which are exported out of India”. Notification No5/2009 has been issued in this regard.

2. Export warehousing of the excisable goods for export facility has been extended to Thiruvallur district in Tamil Nadu and Kanpur which was inadvertently omitted in circular no.626/17/2002-cx is included in circular no.884/04/2009-cx, which has been issued in this regard.

Important Case Laws

1.Aarvee Denims & exports Ltd Vs CCE, Ahmedabad: (2009-TIOL-414-CESTAT-AHM)

Facts: The appellant claimed refund of CENVAT Credit of Additional Excise Duty (Textiles & Textiles articles) earned on the inputs contained in the final products exported under bond on the ground that they could not use the credit for home consumption as there has no levy of additional duty on their final product which is 100% cotton fabrics.

Issue: The department contended that as the AED(T&TA) could not be utilized if the final products are cleared for home consumption and in view of this restriction the refund sought by appellant are not eligible.

Decision: There is no bar for refund of unutilized Additional Excise Duty(AED) under rule 5 of CCR. It was held that Revenue's contention that AED cannot be used for goods cleared for home consumption so refund claim is ineligible is not sustainable-Ahmedabad CESTAT.

2.BASF India Ltd VS CCE, Vapi(2009-TIOL-410-CESTAT-AHM)

Facts: The appellant company produces various excisable products such as insecticides, fungicides, herbicides, weedicides, pesticides etc..

Issue: Revenue has disallowed the Cenvat credit taken in respect of the processes like testing for quality, pasting labels etc undertaken by the appellants in respect products like Alphacypermethrin Tech, Metaphenoxy Benzaldehyde, Metaphenoxy Benzyl, Cypermethric Chloride, Cypermethric Chloride as it does not amount to manufacture.

Decision: Testing for quality, pasting label, showing trade name, company logo, batch number, manufacture date, and expiry date, amounts to manufacture of goods under chapter 29,38. Cenvat Credit is not deniable on such manufacture and export of finished goods. Ahmedabad CESTAT.

3.CCE, Ghaziabad VS M/S Sharda Forging And Stamping (pvt) Ltd:(2009-TIOL407-CESTAT-DEL)

Facts: The respondents were engaged in the manufactures of articles of Iron and Steel and had claimed SSI exemption for payment of concessional rate of duty. It has been alleged that the respondents collected excess amount in the guise of duty and it is hit by Section 11D of the Central Excise Act, 1944. The respondents deposited the said amount through Cenvat Account before issue of show cause notice.

Issue: Revenue, was of the opinion that the case squarely get covered under the judgement of *Allied Photographic India Ltd. reported in 2004 (166) ELT 3 (Supreme Court)*. = [2004-TIOL-27-SC-CX] wherein it has been held that the duty paid by the party on his own account, has to be dealt in view of Section 11(B) of Central Excise Act, 1944

Decision: Excise amount collected in the guise of duty reversed in the Cenvat Account and also paid in cash .Duty paid twice through cash which is recredited to the Cenvat account not hit by section 11B on unjust enrichment of assessee as it is mere account adjustment. Delhi CESTAT.

4.CCE and CC VS Kwality Tube Industries:(2009-TIOL-111-HC-AHM-CX)

Facts: The respondent-manufacturing unit was engaged in the manufacture of Copper and Brass tubes. During the period from 05-03-2000 to 09-03-2000 the Officers of the Appellant visited the factory premises of the Unit and conducted physical stock-taking of the goods lying in the store room in semi-finished and finished states. It was found that there was a shortage of certain copper tubes which had been sent for job-work under Challan, were not received back from the job-worker.

Issues: A show cause notice was issued by the department and subsequent thereto, adjudication took place wherein penalty was imposed for clandestine removal.

Decision: No concrete evidence by way of weighment slips to justify clandestine removal. Delayed Show Cause Notice without proper explanation issued after 4 years questioned by the Tribunal.

5.Glaxo Smithkline Consumer Health Care Vs CCT , chandigarh:(2009-TIOL-405-CESTAT-DEL)

Facts: Cenvat Credit was claimed on inputs (malted foods) cleared for export under bond.

Issues: Authorities have disallowed the credit under Rule 12 of the Cenvat Credit Rules, 2002 and imposed penalty of equal amount under Rule 13 of the Cenvat Credit Rules, 2002 upon the appellants herein on the ground that they had cleared inputs as such for export under bond without payment of duty which was not permissible in terms of Rule 3(4) of the Cenvat Credit Rules, 2002.

Decision: Cenvat credit is available on inputs cleared as such for export under bond.

6. Jyothi Capsules Vs CCE, Kanpur: (2009-TIOL-398-CESTAT-DELHI)

Facts: The Appellant claimed Cenvat Credit of duty on the inputs which go into manufacture of dutiable as well as the exempted medicines and also on the inputs which are exclusively used in the manufacture of exempted medicine.

Issues: The department raised a demand and also imposed penalty under Rule 13 of Cenvat Credit Rules, 2002, on the ground that in respect of clearances of the exempted medicine for export, the Appellant should have paid an amount equal of 8% of the value. In this case the Appellant should have, from the very beginning, declared as to which finished products would be exported by him and which would be cleared for home consumption and separate inventory and account of the inputs to be used for goods meant for export and the inputs to be used for the goods to be cleared for home consumption should have been maintained and since no such declaration has been given and no such separate account and inventory has been maintained, after making clearance for export, the Appellant cannot claim for exemption from making payment of 8% of sale value of the goods.

Decision: 8% duty not payable when the exempted goods are exported under bond when common inputs are used to manufacture dutiable and exempt goods. Delhi CESTAT

7. Mansurpur sugar Mills Vs CCE: (2009-TIOL-395-CESTAT-DEL)

Facts: The Company claimed Cenvat Credit in respect of welding electrodes used for repair and maintenance of the machine.

Issues: Department contended that Cenvat Credit in respect of welding electrodes is not available as per Tribunal's Larger Bench judgment in the case of *J.P. Rewa Cement reported in 2003 (159) ELT 550 = (2003-TIOL-246-CESTAT-DEL-LB)* and also the Tribunal judgment in the case of *Triveni Engineering Industries reported in 2005 (186) ELT 158 (LB)*.

Decision: The cenvat is available in respect of the welding electrodes used for repair and maintenance of the machine.

8. Unison Electronics Pvt Ltd Vs CCE , Noida:(2009-TIOL-30-SC-CX)

Facts: The Company manufactures ice-cream makers cooler and Popcorn makers and avail of the benefit of SSI Exemption Notification and sells the ice cream maker in their own brand name "CREMICA" as well as to different customers with their stickers. The goods were being examined by the Supervisors of these customers before dispatch from the factory and stickers bearing UTS/TSN were being affixed and department has disallowed the benefit of small scale exemption notification treating it as branded goods.

Issues: Whether the appellants are clearing excisable goods manufactured by them bearing the brand name of another person?

Decision: Yes. Even where the brand name is of another person on such production is not reproduced in entirety. Exemption notification to be strictly read.

9. CCE, Ludhiana Vs Fas Kusum Ispat (P) Ltd ,Punjab and Haryana High Court:

Facts: The basic requirement for attracting the provisions of Section 11AC of the Act is that there has to be intention to evade the payment of Excise duty. In the present case such an intention cannot be presumed because the shortage which was detected during stock verification was explained.

Issues: The revenue has approached this Court by filing the instant appeal under Section 35-G of the Central Excise Act, 1944

Decisions: Shortages in stock register. Reasons for such shortage explained, intent to evade tax as such cannot be presumed, penalty not called for.

10. Thiru Arooran Sugar Ltd Vs CCE, Thrichy:(2009-TIOL-372- CESTAT-MAD)

Facts: The appellants herein are manufacturers of sugar, molasses, rectified spirit (non-excisable), extra neutral alcohol (exempted) ethanol, denatured ethyl alcohol etc. They started clearing molasses from their Sugar Unit to Distillery Unit for captive use without payment of duty claiming exemption under Notification No.67/95-CE The exemption under the above Notification is available only when the inputs are used in or in relation to the manufacture of final products specified under the First Schedule to the Central Excise Tariff Act, 1985. However, in the instant cases, molasses were used in the manufacture of exempted/non-excisable final products namely neutral spirit/rectified spirit.

Issues: Thus it appeared to the department that the assesees had wrongly availed the benefit of the Notification.

Decision: Notification 67/95 which exempts inputs, capital goods captively consumed in factory of production from duty of excise can be applied to molasses used captively for rectified spirit, denatured spirit manufacture.

11. Tamil Nadu Steel Tubes Ltd Vs CCE Chennai :(2009-TIOL-366- CESTAT-MAD)

Facts: It appears from the records that the appellants had imported raw material duty-free in terms of Quantity-Based Advance Licences (QBAL) issued by the DGFT as also Customs Notification No.204/92 dt. 19.5.92 issued by the Central Government. Prior to that, they had exported their final product during Jan'95 to Aug'97. The above imports were made for replenishment of the input used in the export goods. The above Notification had not required the reversal of MODVAT credit (if any) taken.

Issues: It is submitted by department that there is no provision for payment of interest by the government but only for recovery of interest by the government. It is further submitted that any claim of interest under Section 11AA is applicable only to an amount of duty and is not applicable to an amount of MODVAT credit

Decision: Chennai CESTAT held that compensation by way of interest not to be given by the government when appellant reversed the Modvat Credit of own volition when not necessary and restored it when Appellate Authority ordered.

12.CCE ,Pune-II Vs D.B. Technologies (P) Ltd (2009-TIOL-361-CESTAT—MUM)

Facts: D.B. Electronics Pvt. Ltd. an SSI unit, are engaged in the manufacture of online uninterrupted power supply systems (UPS systems), static inverters, converters etc. During the course of visit of the officers of central excise to the factory of DBE, it was found that they were undervaluing UPS systems manufactured by them by not including the value of batteries supplied.

Issues: Show cause notice dated 4.2.1993 proposing recovery of duty of Rs.22,41,566.41 on the ground of undervaluation of UPS systems by non-inclusion of value of the battery during the period January 1998 to May 1992, was issued.

Decision: UPS and batteries not cleared together, value of batteries not required to be included in UPS.

13. Orchid Health Care Vs CCE, Chennai:(2009-TIOL-437-CESTAT—MAD)

Facts: The instant applications have been filed by the appellants for waiver of pre-deposit of the above amounts of Central Excise duty found to have been due on clearances of used plastic and metal drums made by the appellants during the period April, 2005 to February, 2006. The appellants are EOUs

Issues: The lower authorities found that the impugned goods were suitable for repeated use and raised demand in terms of Notification No.23/2003-CE dated 31.3.2003. This notification prescribed the manner of computation of duty due on clearances by EOUs in DTA.

Decision: EOU Clearance of plastic drums and containers in DTA. Goods are used and damaged metal, plastic containers, no excise duty payable on the clearance.

14. Paras Fab International Vs CCE, Jaipur :(2009-TIOL-448-CESTAT—DEL)

Facts: Both the Appellants are 100% EOUs engaged in the manufacture of Terry Towels for export. As per the Exim Policy, the 100% EOUs are allowed to sell a portion of their production into Domestic Tariff Area(DTA) on payment of appropriate duty

Issues: According to the Revenue, the Appellants do not satisfy the conditions of this notification and they are not eligible for the benefit of the same the Notification No.15/02-CE

Decision: As EOU got input under CT-3 without duty, the terry towels made out of such not eligible for exemption

15. Alchemie Organics Ltd Vs CCE:(2009-TIOL-451-CESTAT-AHM)

Facts: Ortho Nitro Chloro Benzene Para(ONCBP) and Para Phenylene Do Amine (PPDA) excess stock was found during a surprise visit and a duty demand of Rs. 1,42,216/- has been confirmed. Penalties also have been imposed.

Issues: Commissioner(Appeals) has given a clear finding that the goods were in packed condition and ready for removal. Submitted that confiscation and imposition of penalty are in order.

Decision: Goods in packed condition ready for removal not in the records. Claimed that goods in the packed condition are for reprocessing not tenable. Confiscation upheld.

16. Sabero Organics Gujrat Ltd Vs CCE, Vapi:(2009-TIOL-475-CESTAT-AHM)

Facts: The appellants had sent partially processed inputs to their job worker which was destroyed in a fire on 5/4/2003. The job worker filed FIR with the police on 6/4/2003 and Revenue was intimated on 6/6/2003. Thereafter the appellants filed a claim for remission of duty involved on the inputs sent to the job worker in 2003.

Issues: The remission claim has been rejected on the ground that the appellants are not entitled for remission under Rule 21 of Central Excise Rules in respect of inputs and Rule 21 provides only remission for final products

Decision: Remission of duty on partially processed goods sent to job worker, when destroyed there, there is no need to reverse duty paid on inputs used in manufacture.