

**In Re: Bell Packaging (India) Pvt.**

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**Court :** Authority for Advance Rulings

**Decided On :** Oct-17-2006

**Judge :** S S Quadri, B Agrawal

**Appellant :** In Re: Bell Packaging (India) Pvt.

**Judgement :**

Appellants: In Re: Bell Packaging (India) Pvt. Ltd. Vs.

1. This application, by M/s. Bell Packaging (India) Pvt. Ltd., a resident private limited company is under Section 23C of the Central Excise Act, 1944 (for short "the Act"). The applicant is carrying on the business of designing and manufacturing plastic packaging of retail products using polyester, polypropylene, polyvinyl-chloride films and other polymers, like Diwali gift boxes and clear tubes for single flowers as presents. It proposes to set up a joint venture with a non-resident company, M/s. Bell Packaging Ltd., Luton, United Kingdom, to design and manufacture plastic packaging of retail products with polyester, polypropylene, etc. In the joint venture the foreign equity would be 97% and remaining equity of 3% will be held by the applicant.

On these facts, the applicant set forth the following two questions to seek advance ruling of the Authority: 1. Is the applicant entitled for concession under provision C.E. Notification No. 8/2003 dated 1-3-2003 despite of the fact that proposed equity of a Foreign Corporate Body is 96.875% (greater than 25%) and cannot be considered as a Small Scale Industrial Unit in view of Paragraph 2.5 page 9 of the Booklet of Foreign Direct Investment issued by Ministry of Commence and

Industry? 2. Since the machinery is imported can we start claiming the Credit of the Counter Vailing Duty and Special Additional Duty the moment we pay excise duty at the factory gate on our production? Can we accumulate credit of the CVD & SAD paid on the machinery till we complete clearances of Rs. 100 lakhs? 2. The Jurisdictional Commissioner (for short "the Commissioner") submitted his comments stating that Notification No. 8/2003 dated March 1, 2003 as amended by Notification No. 8/2006 dated 1-3-2006 exempts specified goods whose aggregate value of clearances by a manufacturer from one or more factories or from a factory by one or more manufacturers does not exceed Rs. four hundred lakhs in the preceding financial year. It is added that the Notification as amended subsequently allows the exemption to all the units whether they are registered as SSI or not with the Directorate of Industries. The version of the applicant that it will lose the status of a small scale industry will make no difference and it can avail of the benefit of Notification as amended subject to fulfilment of the conditions therein. In so far as question No. 2 is concerned it is stated, in his further comments, that as per Para 2(iv) of Notification No. 8/2003 dated 1-3-2003, as amended, the exemption therein would apply subject to the condition that the manufacturer does not utilize the credit of duty on capital goods under Rule 3 or Rule 11 of the Cenvat Credit Rules, 2004 paid on capital goods, for payment of duty, if any, on their clearances, the aggregate value of the first clearance of which does not exceed rupees one hundred lakhs as calculated in the manner specified in the Table to the notification.

3. Mr. P.R. Munshi, authorized representative of the applicant, states that in so far as the questions posed for the ruling of the Authority are concerned the Commissioner has conceded that the applicant is entitled to the relief. Mr. A.K. Roy, Joint CDR has read out to us the notification and the rules to support the comments of the Commissioner.

4. By order of the Authority dated 24-8-2006 the above two questions were allowed under Section 23D(2) of the Act for pronouncement of the ruling under Sub-section

(4) thereof. It would be apt to refer to the relevant portion of Notification No. 8/2003 as amended by Notification No. 8/2006. In so far as the said notification is relevant for the purpose, it reads as follows: Notification No. 8/2003-C.E., dated 1-3-2003 as amended. - In exercise of the powers conferred by Sub-section

(1) of Section 5A of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as the Central Excise Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 8/2002-Central Excise, dated the 1st March, 2002, published in the Gazette of India vide number G.S.R. 129(E), dated the 1st March, 2002, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts clearances, specified in column

(2) of the Table below (hereinafter referred to as the said Table) for home consumption of excisable goods of the description specified in the Annexure appended to this notification (hereinafter referred to as the specified goods), from so much of the aggregate of- (i) the duty of excise specified thereon in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the First Schedule); (ii) the special duty of excise specified thereon in the Second Schedule to the said Central Excise Tariff Act, 1985 (hereinafter referred to as the Second Schedule), as is in excess of the amount calculated at the rate specified in the corresponding entry in column

(3) of the said Table: Provided that nothing contained in this notification shall apply to a manufacturer who has availed the exemption under Notification No. 39/2001-Central Excise, dated the 31st July, 2001, published in the Gazette of India vide number G.S.R. 565(E), dated the 31st July, 2001, in the same financial year.

Provided further that exemption contained in this notification shall not apply to goods which are chargeable to nil rate of duty or are exempt from the whole of duty of excise leviable thereon.

Table-----	S. No.	Value of clearances	Rate of
Duty-----	(1)		(2)
(3)-----		--	--

----- -- -- 2. The exemption contained in this notification shall apply subject to the following conditions, namely: (iv) the manufacturer also does not utilize the credit of duty on capital goods under Rule 3 or Rule 11 of the said Rules, paid on capital goods, for payment of duty, if any, on the aforesaid clearances, the aggregate value of first clearances of which does not exceed rupees one hundred lakhs, as calculated in the manner specified in the said Table.

5. Though Clause (iv) refers to Rules 3 and 11, we may refer only to Rule 3 as Rule 11 is not relevant for the present discussion being a transitional provision. The material portion of Rule 3 is as follows: RULE 3. CENVAT credit. - (1) A manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of - (i) the duty of excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act; (ii) the duty of excise specified in the Second Schedule to the Excise Tariff Act, leviable under the Excise Act; (iii) the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); (iv) the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); (v) the National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001 (14 of 2001); (vi) the Education Cess on excisable goods leviable under Section 91 read with Section 93 of the Finance (No. 2) Act, 2004 (23 of 2004); (vii) the additional duty leviable under Section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under Clauses (i), (ii), (iii), (iv), (v) and (vi); (viii) the additional duty leviable under Sub-section (5) of Section 3 of the Customs Tariff Act....

6. On a perusal of exemption notification quoted above we are left in no doubt that the applicant is entitled to the exemption subject to the conditions specified in Para 2 of the Notification, noted above.

7. A plain reading of the rule quoted above, makes it clear that, among others, a manufacturer is also entitled to take Cenvat credit of duty of excise specified in the First Schedule and the Second Schedule to the Excise Tariff Act, leviable under

the Excise Act. A combined reading of the notification and Rule 3 would show that to claim the exemption under the notification a manufacturer has to show, inter alia, that he has not utilized the credit of duty on capital goods under Rule 3. Therefore, the applicant cannot claim credit of CVD and SAD as referred to by it till it completes clearances of rupees one hundred lakhs.

8. For the above reasons, we rule on the aforesaid questions as follows: (1) The applicant is entitled for concession under the provisions of Notification No. 8/2003 dated 1-3-2003 as amended irrespective of the fact that the proposed equity of a foreign corporate body is 96.875% in the joint venture and the appellant ceases to be a SSI unit.

(2) On the importing of machinery by paying CVD and SAD, that is, additional duties leviable under Sub-sections (1) and (5), respectively, of Section 3 of the Customs Tariff Act, 1975, the applicant can start claiming the credit of CVD and SAD from the moment it exhausts exemption limit and pays excise duty at the factory gate on its production and that it can accumulate credit of CVD and SAD paid on the machinery till it completes clearances of Rs. One hundred lakhs.

(Pronounced in the open Court of the Authority on this 17th day of October, 2006.)

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