

**Commissioner of Central Excise Vs. Cestat, South Zonal Bench and Sunpack**

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**Court :** Chennai

**Decided On :** Jul-10-2008

**Reported in :** 2008(159)ECC292; 2008(230)ELT209(Mad)

**Judge :** K. Raviraja Pandian and ;P.P.S. Janarthana Raja, JJ.

**Acts :** Central Excise Tariff Act; Central Credit Rules, 2002 - Rules 8, 8(1), 12 and 13; [Central Excise Act, 1944](#) - Sections 11A, 11AB and 35E(2)

**Appeal No. :** Civil Miscellaneous Appeal No. 1808 of 2008

**Appellant :** Commissioner of Central Excise

**Respondent :** Cestat, South Zonal Bench and Sunpack

**Advocate for Pet/Ap. :** C.A. Duraimanickam, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**K. Raviraja Pandian, J.**

1. The Department has come up on appeal against Final Order No. 1139/2007, dated, 7th September, 2007 made by the Customs, Excise and Service Tax

Appellate Tribunal, (hereinafter referred to as 'CESTAT'), Southern Regional Bench, Chennai # 600 006.

2. The facts of the case are as follows:

The Second Respondent is a manufacturer of polypropylene bags and tubing, thereof which is classified under Chapter 39 of the Central Excise Tariff Act and having its factory located at R.S. Nos. 91/6, 91/7, 91/12, Pondy-Cuddalore Main Road, Kirumampakkam, Pondicherry until 31st March, 2004. With effect from 1st April, 2004, the Second Respondent shifted its factory to C-52, PIPDIC Industrial Estate, Mettupalayam and got itself registered with the Appellant Authorities. The Commissioner of Central Excise, Pondicherry issued a Show Cause Notice dated, 4th April, 2005 calling upon the Second Respondent to show cause as to why (i) an amount of Rs. 6,62,971 (Rupees six lacs sixty two thousand nine hundred and seventy one only) being the credit taken by them should not be recovered under Rule 12 of Central Credit Rules 2002 read with Section 11A of [Central Excise Act, 1944](#), (ii) penalty should not be imposed on them under Rule 13 of CENVAT Credit Rules, 2002, and (iii) appropriate interest should not be demanded under Rule 12 of CENVAT Credit Rules, 2002 read with Section 11AB of the [Central Excise Act, 1944](#).

The reply submitted by the Second Respondent has been considered by the Commissioner, who by his Order, dated, 1st June, 2005 accepting the explanation submitted by the Second Respondent and having discussed the case with reference to the relevant rules, dropped the proceedings initiated by the Show Cause Notice dated, 4th April, 2005. That Order came to be reviewed by the Commissioner, Central Excise, who by Order, dated, 6th April, 2006 exercising his power under Section 35E(2) of the [Central Excise Act, 1944](#), directed the Assistant commissioner of Central Excise, II Division, Pondicherry to file an application before the Commissioner of Central Excise (Appeals), Chennai to set aside the Order in Original. On such appeal being filed, the Commissioner of Central Excise by his Order, dated, 12th March, 2007 partly granted the relief in favour of the Second Respondent and partly rejected on the ground of excess availment of credit. The Second Respondent filed an appeal before the CESTAT and the

CESTAT allowed the appeal. The correctness of the said Order is now canvassed by the Department by framing the following questions of law:

1. Whether the first Respondent is right in law by passing an Order contrary to Rule 8 of the CENVAT Credit Rules, 2002 and the Board's circular No. 1/93-CX.8 dated, 5th January, 1993 (in file F. No. 263/9/92-CS.8)?
2. Whether the Hon'ble CESTAT ought to have dismissed the Petition itself as prima facie not maintainable being contrary to law?
3. We heard the argument of the learned Counsel appearing for the Department and perused the materials on record.
4. The point in issue is, whether the Second Respondent complied with the provisions of Rule 8 of the CENVAT Credit Rules.
5. Rule 8 of the CENVAT Credit Rules reads as follows:

Rule 8. Transfer of Credit.

(1) If a manufacturer of final products shifts his factory to another site or the factory is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of factory to a joint venture with the specific provision for transfer of liabilities of such factory, then the manufacturer shall be allowed to transfer the CENVAT credit lying unutilized in his accounts to such transferred, sold, merged, lease or amalgamated factory.

(2) The transfer of CENVAT credit under Sub-rule (1) shall be allowed only if the stock of the inputs as such or in process or the capital goods is also transferred along with the factory to the new site or ownership and the inputs or capital goods on which credit has been availed of are duly accounted for to the satisfaction of the Commissioner.

6. As per the Rule, if a manufacturer of the final products shifts his factory to another site, then the manufacturer shall be allowed to transfer the CENVAT Credit lying unutilised in his accounts to such transferred factory. The transfer of CENVAT credit shall be allowed only if the stock of inputs as such or in process or

the capital goods is also transferred along with the factory to the new site and the inputs or the capital goods on which credit had been taken are duly accounted for to the satisfaction of the Deputy Commissioner, Central Excise.

7. In the instant case, the Second Respondent has shifted the factory to the new site from Cuddalore to Pondicherry. The Second Respondent has transferred a quantity of 16548.12 kgs of inputs i.e., plastic granules and one capital goods i.e., automatic bag machine, which were the available inputs and capital goods to the new site, which has been found correct as per the verification report submitted by the two respective Range officers. The Second Respondent has informed the Deputy Commissioner about the shifting of the factory and on receipt of such information, the Deputy Commissioner directed the Range Superintendent to cause necessary verification of the receipt of the amount of inputs and capital goods. On causing physical verification, the Range Officer of the new premises in his letter dated, 29th November, 2004 reported that the Second Respondent has received 16548.12kgs of plastic granules as inputs and one automatic bag machine to the new premises and further reported that the inputs and capital goods were already entered in the respective registers. Further, it is on record by way of verification report from the Range Officer of old premises that there was credit balance of Rs. 5,84,539 in respect of inputs and Rs. 78,432 in respect of capital goods in the respective MODVAT registers as unutilised credit balance and 16,548.12kgs of inputs, one automatic bag making machine are the inputs and capital goods available with the Second Respondent, which is evident from the letter of the Range Officer dated, 27th October, 2004.

8. From the above, it is clear that the capital goods, the inputs and the balance unutilised credit balance in question have been properly received and accounted for by the Assessee in the respective registers. The Rule does not require that the Assessee can transfer the credit corresponding only to the quantum of inputs transferred to the new factory, but permits the Assessee to transfer the available credits along with inputs and capital goods in stock at the factory to the new location. Thus, requirement of Rule 8 has been fulfilled by the Second Respondent.

9. Hence, we find no discrepancy or infirmity has been pointed out by the Counsel for the Department and we do not find any infirmity in the Order of the Tribunal or any question of law is left to be undecided for entertainment of this appeal. Therefore, the appeal is dismissed. No costs.

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