

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH: NEW DELHI
COURT NO.I

Excise Appeal No. 1981 of 2006-SM

[Arising out of Order-in-Original No. 851 (HKS)CE/JPR-II/2005 dated 15.12.2005
passed by the Commissioner (Appeals) Customs & Central Excise, Jaipur]

Date of Hearing/Decision : 26.11.2008

M/s DCM Fabrics Appellant

Vs.

CCE, Jaipur-II Respondent

Ms. Asmita Nayak, Advocate for the appellant
Mr. R.K. Saini, DR for the respondent

CORAM: Ms. Jyoti Balasundaram, Vice President

AIT Head Note: **when assessee goes out of modvat scheme or when company is closed, refund claim can be made in cash**(Para 2)

O R D E R

Per Jyoti Balasundaram:

The appellants herein are engaged in the processing of cotton fabrics falling under Chapter 52 of the first schedule to the Central Excise Tariff Act, 1985. By the Notification No. 25/2003 dated 25.03.2003, they were entitled to avail one time deemed credit on gray fabrics lying in their stock or in process or contained in finished goods lying in their stock as on 31.3.2003 (subsequently changed to 01.04.2003). Relevant declaration was filed on 16.6.2003 which was beyond the last date for filing the declaration viz 15.6.2003. The Deputy Commissioner therefore disallowed the credit of Rs. 81,920/- and ordered its recovery together with interest and also penalty of Rs. 8,000/- on the appellants. This order was set aside by the Commissioner (Appeals) and the case remanded to the adjudicating authority who vide his order dated 11.7.2005 sanctioned claim of Rs. 81,920/- out of which Rs. 79,532/- was allowed as cenvat credit and the remaining amount of Rs. 2388/- was paid in cash to them. Hence, this appeal against the refund by way of cenvat credit.

2. I have heard both sides and perused the records. The issue in dispute as to whether the appellants are entitled to refund in cash. I find that in the case of Slovak India Trading Co. Pvt. Ltd., vs. CCE, Bangalore -2006 (205) ELT 956 (Tri. Bang.) the Tribunal has held that when assessee goes out of modvat scheme or when company is closed, refund claim can be made in cash and the Tribunal's order has been upheld by the Hon'ble High Court of Karnataka as seen from 2006 (201)

ELT 559 (Kar.), holding that Rule 5 of the Cenvat Credit Rules, 2002 does not expressly prohibit refund of unutilized credit when there was no manufacture due to closure of factory. In the present case, the appellants have closed factory and surrendered their excise license and therefore the ratio of Slovak India Trading Co. Pvt. Ltd., decision applies on all fours. Following the ratio thereof, I hold that cash refund is admissible to the appellants, set aside the impugned order relating to refund of Rs.79,532/- by way of cenvat credit, and allow the appeal.

[Dictated and pronounced in the open Court]