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**(2010) 04 P&H CK 0472**  
**In the Punjab And Haryana At Chandigarh**

Commissioner of C. Ex.

APPELLANT

Vs

Neel Kanth Rubber Mills

RESPONDENT

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**Date of Decision :** 22-04-2010

**Acts Referred:**

Customs Tariff Act, 1975 — Section 3

**Citation :** (2010) 254 ELT 203

**Hon'ble Judges :** Mehinder Singh Sullar, J; Ashutosh Mohunta, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

1. The revenue has directed the present appeal against the impugned order dated 6-2-2009/12-3-2009 (Annexure A4), vide which, the Customs, Excise & Service Tax Appellate Tribunal, dismissed its appeal.

2. The brief facts, relevant for disposal of present appeal and emanating from the record, are that the respondent-assessee M/s. Neel Kanth Rubber Mills (for short "the assessee") was manufacturer of T.R. Belting and Conveyor Belting and was availing the Cenvat credit of duty on inputs, under the Cenvat Credit Rules, 2002. During the course of audit of the records, it was noticed by the officers of the department that the assessee had imported certain raw material under the Duty Entitlement Pass Book (for brevity "the DEPB"), on which additional duty of customs i.e. CVD had been debited from DEPB account and had not been paid in cash.

3. The revenue claimed that since the assessee wrongly availed the Cenvat credit, so, a show cause notice (Annexure A1) was issued to it (assessee), as to why the amount of Cenvat credit alongwith interest be not recovered and penalty be not imposed.

4. In pursuance of the show cause notice, the assessee filed the reply, inter alia, explaining that as per the amended EXIM Policy, vide Notification dated 28-1-2004, the Cenvat credit was admissible to the assessee on the additional

duty paid in cash or through debit under the DEPB. According to the assessee, as per Notification No. 96 dated 17-9-2004, the importer shall be entitled to avail the Cenvat credit of additional duty leviable u/s 3 of the Customs Tariff Act (hereinafter to be referred as "the Act") against the amount debited in DEPB. It will not be out of place to mention here that the assessee has stoutly denied all other allegations contained in the show cause notice (Annexure A1), pleaded that they have legally availed the Cenvat credit and prayed for withdrawal of the said notice.

5. The explanation put forth by the assessee did not find favour and the Adjudicating Authority disallowed the Cenvat credit, ordered its recovery alongwith interest and imposed a penalty of Rs. 1 lac, vide order dated 21-2-2006 (Annexure A2). The perusal of the record would reveal that the Assistant Commissioner dropped the proceedings, initiated under the show cause notice and sanctioned the refund claim, vide order dated 31-5-2006 (Annexure A2/1), the operative part of which is, reproduced as under:

1. I drop the show cause notice proceedings initialed against the noticee vide C. No. V(30) D/NK/72/05/13876-77, dated 2-12-2005.

2. I sanction refund claim of Cenvat Credit of Rs. 1,55,599/- (Rs. 1,52,548/- CVD + Rs. 3,051/- Education Cess) to the noticee by way of credit in their Cenvat Credit account.

3. I sanction refund claim of Rs. 15,200/- by way of Cheque on account of interest deposited by the noticee on 20-8-2005.

6. Aggrieved by the order (Annexure A2), the assessee filed the appeal, which was accepted by the Commissioner (Appeals), vide order dated 9-6-2006 (Annexure A3) and set aside the duty of demand and penalty. However, the appeal filed by the revenue against the order of Assistant Commissioner (Annexure A2/1), was rejected, vide order dated 1-11-2007 (Annexure A3/1).

7. Again aggrieved by the orders (Annexure A3 and A3/1), the revenue filed the appeals, which were rejected as well, by the Appellate Tribunal, vide order (Annexure A4).

8. The revenue still did not feel satisfied with the impugned orders (Annexure A4) and filed the present appeal.

9. We have heard the learned Counsel for the revenue and have gone through the record with his valuable help.

10. The main argument of the learned Counsel for the revenue that since the licence in the present case was issued under the previous policy and during that period, the Cenvat credit was not admissible in CVD paid, otherwise than in cash, so, the assessee is not entitled to avail the Cenvat credit, is not only devoid of merit but misplaced as well, because the EXIM Policy amended, vide Notification dated 28-1-2004 and Notification No. 96 dated 17-9-2004, postulate that "an

importer shall be entitled to avail the Cenvat credit of additional duty leviable u/s 3 of the Act against the amount debited in DEPB. There is no such condition in the indicated notifications that the debits made in DEPB, the licenses issued under the Foreign Trade Policy only would be eligible for credit and the debits made in DEPB issued under the previous policy will not be eligible for credit. It means, the assessee was entitled to claim the benefit in this relevant connection.

11. It is not a matter of dispute that the assessee fulfills all other conditions to avail the Cenvat credit. Once the Notification has been amended on 17-9-2004 to extend the benefit of availment of credit of CVD debited through DEPB account, in that eventuality, the revenue cannot deny the benefit of Cenvat credit to the assessee, in the obtaining circumstances of the case. We are of the considered opinion that the Adjudicating Authority has rightly dropped the proceedings and refunded the amount of Cenvat credit to the assessee, vide order (Annexure A2/1), which was upheld by the Commissioner (Appeals) as well as the Appellate Tribunal.

12. No other legal infirmity in the impugned order has been pointed out by the learned Counsel for the revenue.

13. In the light of the aforesaid reasons, the present appeal is hereby dismissed with no order as to costs.