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**(2011) 04 KAR CK 0130**  
**In the Karnataka High Court**  
**Case No : C.E.A. No. 109 of 2009**

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|--------------------------------------|------------|
| Commissioner of C. EX., Bangalore-II | APPELLANT  |
| Vs                                   |            |
| Gokaldas Intimate Wear               | RESPONDENT |

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**Date of Decision :** 11-04-2011

**Acts Referred:**

**Citation :** (2011) 270 ELT 351

**Hon'ble Judges :** Ravi Malimath, J;N. Kumar, J

**Bench :** Division Bench

**Advocate :** B. Pramod, for the Appellant; K.S. Ravishankar, for the Respondent

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## Judgement

N. Kumar, J.—This appeal is preferred against the order passed by the Tribunal which held that the assessee is not liable to reverse the

cenvat credit in respect of the inputs which were purchased prior to 1-8-2004, the day from which an exemption was granted, from payment of

excise duty in respect of final products.

2. The assessee are the manufacturers of readymade garments. They availed cenvat credit and cleared the finished products on payment of duty. A

notification came to be issued on 9-4-2004 granting exemption in respect of the final products and consequently, from 1-8-2004, the day from

which the notification came into force, the assessee was not entitled to cenvat credit. However, as on 1-8-2004, the assessee held inputs and

semi-finished goods in stock. The revenue proceeded against the assessee invoking the proviso of Section 11A and proposed demand for

irregularly availed cenvat credit and interest thereon. Penalty was also proposed. The Original Authority held that the assessee is liable to reverse

the credit. In appeal, the Commissioner of Appeals upheld the said order. It is

against the said order, the assessee preferred an appeal to the Tribunal. The Tribunal held that in respect of semi-finished products and raw materials held in stock prior to 1-8-2004, the assessee is entitled to the benefit of cenvat credit and is not under any obligation to reverse the credit. Aggrieved by the said order, the revenue is in appeal.

3. This appeal was admitted to consider the following substantial questions of law :

(i) Whether the CESTAT is correct in holding that once the input credit is taken legally, then the same cannot be denied after the issue of exemption notification on the final product?

(ii) Is not the assessee who has taken credit on the input lying in the stock and those contained in semi-finished and finished goods required to be reversed when final product is exempted?

(iii) Whether the CESTAT was justified in passing the impugned order without discussing the facts of the case alleged to be covered and its application to the case on hand?

4. This Court in the case of the Commissioner of Central Excise Vs. Tafe Ltd. (Tractor Division), after referring to the various judgments held that

once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted

subsequently. Only if any products are purchased subsequent to the said exemption and if any tax is paid on such inputs, as the final product is

exempted from payment of tax, the assessee would not be entitled to avail the cenvat credit on such inputs. But the cenvat credit availed on such

inputs till the date of exemption, they vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the

same. Therefore, the authorities taking advantage of the notification exempting the final product cannot claim reversal of cenvat credit either in

respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in

progress and finished products. Therefore, the judgment in the aforesaid case squarely applies to the case on hand and the Tribunal was justified in

granting benefit.

5. It was pointed out to us that in the year 2008 (sic) sub-rule (3) was inserted by a Notification No. 10/2007 with effect from 1-3-2007, which

reads as under :-

(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in

respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product

lying in stock, if, -

(i) he opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification

issued u/s 5A of the Act; or

(ii) the said final product has been exempted absolutely u/s 5A of the Act, and after deducting the said amount from the balance of CENVAT

credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other

final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India

or exported.

6. Therefore, it is clear from the aforesaid. Rule that till 1-3-2007, the assessee was entitled to benefit, of the cenvat credit in respect of inputs

contained in the work in progress and semi finished products. The said amendment is prospective in nature. It comes into effect from only 1-3-

2007. In the instant case, the period is anterior to 1-3-2007, which has no application. Therefore, the substantial questions of law raised in this

appeal are answered in favour of the assessee and against the revenue.