

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. A. D. Jain, Vice-President

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2038/Del/2018 : Asstt. Year : 2009-10

Nagesh Knitwears Pvt. Ltd., G. T. Road, West, Ludhiana, Punjab-141008	Vs	Addl. CIT, Special Range-6, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAACN2140D		

**Assessee by : Sh. Subhash Agarwal, Adv.
Revenue by : Ms. Shweta Yadav, Sr. DR**

Date of Hearing: 09.02.2022	Date of Pronouncement: 17.03.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-37, Delhi dated 28.02.2018.

2. Following grounds have been raised by the assessee:

"That the Id. CIT(A) has erred both in law and on facts in not allowing relief of Rs.7,84,058/- being the disallowance made by the Id. Assessing Officer on account of Central Excise Duty (Basic Excise Duty "BED" recoverable =3,41,390/- and Additional Excise Duty "AED" recoverable = 4,42,468/-) which was written off."

3. During the year under consideration the assessee company was engaged in the business of manufacturing of woolen, cotton and blended hosiery knitwears. The facts of the case are that the return of income was filed on 29.09.2009 declaring income of Rs. 2,57,28,240/-.

4. While examining the accounts, the Assessing Officer noticed that the assessee had debited an amount of Rs. 8,45,000/- under the head sundry balances written off. The assessee has written off VAT recoverable of Rs. 1,48,130/- and AED recoverable of Rs. 7,84,058/-. The assessee was required to justify its claim regarding writing off the said dues from the government. The assessee submitted that the Central Excise duty had not been charged to the purchase account and since the same was recoverable from customers on sales and balance, if any, charged by the suppliers was considered as recoverable from the Government. The assessee further submitted that the balance remaining after recovery from customers was neither refunded by the Government nor there was any hope of getting it back from the Government and therefore, the same was written off, being revenue in nature.

5. The Assessing Officer held as under:

"The assessee has itself stated that the Excise duty has not been charged to the purchase account. Further the assessee has also failed to file any evidence with regard to the fact that this Excise recoverable amount of Rs. 7,84,058/- was ever credited to the P&L account. No evidence with regard to the non recoverability from the Government has been filed. In view of the foregoing facts Excise duty recoverable of Rs. 7,84,058/- is being added back to the income of the assessee".

6. The Id. CIT(A) confirmed the addition on the ground that no evidence with regard to the non-recoverability from the Government was also filed. Even during the appellate proceedings the onus regarding establishing the same has not been discharged. It was held that even in the case of ACIT Vs. M/s Rangoli Industries Pvt. Ltd. (ITA No. 936/AHD/2010) relied

upon by the appellant, relief had been given on the basis of evidence in the form of RG-23A Part-II register produced before the Assessing Officer. The Id. CIT(A) held that in the case Rangoli Industries (supra), it was also established that the CENVAT credit pertains to input and the purchase cost of the inputs had been debited net of CENVAT credit in the P&L account.

7. We have gone through the submissions. Primarily, we find that the writing off of unutilized CENVAT credit has been allowed by the revenue in the A.Y. 2010-11. Notwithstanding that, we have examined the issue. The assessee is in the business of manufacturing of woolen, cotton and blended hosiery knitwears declared taxable income of Rs.2.57 crores. Whenever the Excise Duty is written off at the time of surrender of excess registration certificate as the assessee would no longer be in a position to utilize the Excise Duty. The assessee pays CENVAT on purchase of raw material and claims benefit of set off against Excise Duty payable on manufactured items. The assessee increases the value of the purchases in respect of duty paid in the form of AED but the same could not be adjusted against the CENVAT rules because on the finished goods only the basic duties levied. Therefore, the difference of loss incurred on account of rate differential between input and output Excise Duty is allowed to be claimed as business expenditure. This is generally a regular practice in the manufacturing sector which is also followed by the assessee from year to year. The CENVAT credit receivables which could not be set off has been rightly claimed by the assessee as deduction.

8. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 17/03/2022.

Sd/-

(A. D. Jain)
Vice President

Dated: 17/03/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR