

F No. 21/01/2006-CX-I
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs

New Delhi, 19th January, 2009.

To

The Chief Commissioners of Central Excise (All),
The Commissioners of Central Excise (All)
DGCEI.

Subject: - Availability of cenvat credit of the duty paid on the inputs used in the manufacture of branded goods on which duty is paid by a manufacturer who has opted to avail exemption on payment of duty based on the value of clearance as per SSI exemption notification.

Sir,

Reference has been received from associations as well as field formations on the issue as to whether a manufacturer who has opted to avail exemption from payment of duty based on value of clearance as per SSI notification, can also avail credit of duty paid on inputs used in the manufacture of branded (others) dutiable goods.

2. SCNs have been issued citing the judgment of Apex Court in the case of Ramesh Food Products, 2004(174)ELT 310 (SC). In the case of Ramesh Food Products, it was held by the Supreme Court that under Notification No.175/86-CE, simultaneous availment of credit of duty paid on inputs used in the manufacture of branded (others) dutiable goods and availment of full exemption for non-branded goods is not permissible.

3. Subsequently, in the case of Nebulae Health Care Ltd vs. Commissioner of Customs, Chennai, 2006-TIOL-1380-CESTAT-Mad, the Tribunal has held that simultaneous availment of credit for inputs used in the manufacture of branded products and of full exemption for other products is permissible under the subsequent SSI exemption Notification Nos. 8/99, 9/99, 8/2000, 8/2001, 8/2002 and 8/2003. In the said judgment, the Tribunal discussed the Supreme Court judgment in Ramesh Food products case at length, and held that Supreme Court decision was not applicable to present case where the notifications under consideration were differently worded.

4. An appeal has been filed before the Supreme Court against the decision of the Tribunal in the case of M/s Nebulae Health Care Limited. This appeal has been admitted.

5. Now, since an appeal has been filed before the Supreme Court in the case of M/s Nebulae Health Care, the Board has decided that it would be appropriate to await the outcome of the Civil Appeal filed in the Supreme Court. Therefore, such cases may be kept pending in call book.

Yours faithfully,
Sd/-

(Ashima Bansal)

Under Secretary to the Government