

## **THE LAST (LOST) SENTENCE!**

**(By Swamy Associates)**

The mini EXIM Policy has arrived without much tremor. Pundits have already analysed the impact of the amendments both on Macro and Micro levels. On our part, we have spotted one golden pin in the haystack. Para 11 of Notification 28/(RE 2003)/2002-2007, dated 28.01.2004 reads as **"The last sentence of paragraph 4.3.5 stands deleted."**

When viewed through the Excise window, this one liner has a telling impact. To appreciate the issue in detail, let us first go to the last sentence of paragraph 4.3.5 of the EXIM Policy, which has now been deleted. It read as, **"In cases, where the additional customs duty is adjusted from DEPB, no benefit of CENVAT / Drawback shall be admissible"**.

Kind reference is drawn to our earlier article titled as "CENVAT CREDIT OF DEPB DEBIT" (2003 (57) RLT R29) wherein we have discussed the issue of availing Cenvat Credit on the additional duty (CVD) adjusted by making debit entry in DEPB and not in cash. In the said article, we have discussed the decision of the Hon'ble Tribunal in the case of M/s. Polyhose India Pvt. Ltd., Vs CCE, Chennai as reported in 2003 (54) RLT 572 (CESTAT- Che). We drew the bone marrow from the above said last sentence of para 4.3.5 of the EXIM Policy and opined that the decision of the Hon'ble Tribunal in the above said case would have been different, had the above provision been impressed by the Revenue.

Kind reference is drawn to the decision of the Hon'ble Tribunal in a recent judgement in the case of M/s.SPIC Ltd., Heavy Chemicals Division Vs CCE, Chennai as reported in 2004-TAXINDIAONLINE-41-CESTAT-MAD, wherein the Hon'ble Tribunal has upheld the decision of M/s. Polyhose. In the stated judgement, the Hon'ble Tribunal has allowed the Cenvat Credit of the additional duty (CVD) debited in DEPB. The Hon'ble Tribunal, in the said judgement has also observed that, the bar provided in para 4.3.5 is an amendment made in the subsequent EXIM Policy 2002-07 and cannot be considered, as the period of dispute in the said case was governed under EXIM Policy 1998, when there was no such specific prohibition. It left serious doubts in the ever-whimsical minds that, whether the Bench would have considered the same, had the provision been there during the material period. But the latest deletion of the embargo provided under para 4.3.5 of the EXIM Policy, relieves the forehead wrinkles and seals the issue beyond doubt.

Despite the fact that the imports under DEPB scheme are exempted from payment of customs duty, by the above said decisions and deletions, we are left with no other option but to accept that "CENVAT CREDIT IS ADMISSIBLE ON ADDITIONAL DUTY (CVD) ADJUSTED BY MAKING DEBITS IN DEPB". The "lost sentence" has thus written the "last sentence", ending the debate.

**( Jai Kumar, Natarajan & Karthik)**