Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.1

Excise Appeal No. 142 of 2012
[Arising out of OIA-7/2012-AHD-III-/KANPAZHAKAN/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD-III]

M/s Kalpataru Papers Ltd. ....**Appellant**
116/117, Nr Khatraj Chowkdi,
Village-Karoli, Tal. Kalal, Dist. Gandhinagar.

VERSUS

C.C.E. & S.T.- Ahmedabad-iii ....**Respondent**
Custom House, 2nd Floor, Navarangpura,
Ahmedabad, Gujarat-395001

WITH

Excise Appeal No. 286 of 2012
[Arising out of OIA-68/2012/AHD-III/KANPAZHAKAN/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD-III]

M/s Kalpataru Papers Ltd. ....**Appellant**
116/117, Nr Khatraj Chowkdi,
Village-Karoli, Tal. Kalal, Dist. Gandhinagar.

VERSUS

C.C.E. & S.T.- Ahmedabad-iii ....**Respondent**
Custom House, 2nd Floor, Navarangpura,
Ahmedabad, Gujarat-395001

<u>APPEARANCE:</u>

Sh. S.J. Vyas (Advocate) for the Appellant
Sh. T.K. Sikdar, Authorised Representative for the respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

Final Order No. A/ 11110-11111 /2019

DATE OF HEARING: 05.07.2019
DATE OF DECISION: 05.07.2019

RAMESH NAIR

The issue involved is that whether the appellant is entitled for cenvat credit on the stock of input lying as on 31.03.2010 and credit availed subsequently when the appellant have not opted for exemption Notification No. 4/06-CE and paid the duty. The case of the department is that since Notification 4/06-CE is available to the appellant they were not required to pay the duty and consequently the cenvat credit is not admissible.

2. Sh. S.J. Vyas, Ld. Counsel appearing on behalf of the appellant submits that firstly the exemption Notification 4/06-CE is not absolute but it is optional for the assessee to avail or not to avail the exemption notification. Therefore, by not availing the exemption and by paying the excise duty they are entitled for the cenvat credit. He also placed reliance on the judgment of this Tribunal in the case of Balkrishna Paper Mills Ltd. vs CCE Thane-I 2015 (329) ELT 468 (Tri. Mum.) which has decided absolutely identical issue.

3. Sh. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. Heard both the sides and perused the records. We find that denial of Cenvat Credit is only on the ground that the appellant should have availed the exemption Notification No. 4/06-CE and therefore, there were not entitled for the cenvat credit. It is undisputed fact that the appellant have not availed the exemption 4/06-CE and discharged the excise duty on their final product. Once they have paid the Excise duty which has not been disputed by the department the appellant is entitled for the cenvat credit. Moreover, the exemption Notification 4/06-CE is conditional and it is option for the assesee whether to avail or not to avail said exemption, therefore, by not availing the exemption there is no violation of any provision of the law. The very same issue has been considered by this Tribunal in the case of Balkrishna Paper Mills Ltd. (supra). Accordingly, the cenvat was rightly taken by the appellant. The impugned order is set aside and the appeals are allowed.

(Dictated & Pronounced in the open court)

Ramesh Nair
Member (Technical)

(Raju)
Member (Technical)

Neha