CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

<u>REGIONAL BENCH : COURT NO - 3</u>

EXCISE Appeal No. 372 of 2012-DB
(Arising out of OIA no. 63-64/2012/AHD-III/KANPAZHAKAN/COMMR-A-/AHD dated 14.03.2012 passed by Commissioner of Central Excise-AHMEDABAD-III)

Mac Paper Mills ...Appellant
Lanva Manud Road,
At : Shelavi, P.o. Palasar, Taluka : Chansama,
PATAN,
GUJARAT .

-Versus-

C.C.E. & S.T.-Ahmedabad-iii ...Respondent
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat
380009

Present For the Appellant : Shri M.A. Patel, Consultant

Present For the Respondent : Shri T.K. Sikdar, Asst. Commr. (AR)

CORAM:

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

<u>FINAL ORDER NO. A/ 11683/2019</u>

Date Of Hearing : 29/08/2019
Date Of Decision : 29/08/2019

<u>RAMESH NAIR</u>

The brief facts of the case are that the appellants are engaged in the manufacture of handicraft papers and availing the exemption notification no. 04/2006-CE dated 01.03.2006 under Sr. no. 91 and 93. They are also availing the Cenvat Credit in respect of inputs used for manufacture of final product, i.e. M.G. Craft papers. The case of the department is that since the final product manufactured by the appellant is exempted from payment of duty under notification 04/2006-CE, as per section 5A, they are not supposed to pay duty, they have to compulsorily avail the exemption. Consequently, they are not entitled for the Cenvat Credit. Hence, the demand for the Cenvat Credit was raised.

2. Shri M.A. Patel, Ld. Counsel appearing on behalf of the appellant submits that they are availing exemption of concessional rate of duty under Sr. no. 93 and they are not availing under S. no. 90. Exemption against Sr. No. 93 which attract nil rate of duty, contain the conditions, therefore, it is optional for the assessee either to avail exemption under S. no. 93 of notification no. 04/2006-CE. Therefore, merely because conditional notification not availed, benefit of Cenvat Credit cannot be denied. In support of his submission, he placed reliance on the judgments of this

Tribunal in the case of Balkrishna Paper Mills Ltd. v/s CCE, Thane-I 2015 (329) 468 (Tri-Mumbai)

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

4. We have considered the submission made by both the sides and perused the records. We find that the appellant have availed the exemption under Sr. no. 93 and paid the concessional rate of duty. The department’s case is that since there is a nil rate of duty under Sr. no. 93, the appellant should have availed the said exemption. Consequently, they were not entitled for the Cenvat Credit. On perusal of the notification, under Sr. no. 93, we observe that there are conditions for such notifications. Therefore, in terms of section 5A (1A) only in a case where the goods are absolutely exempted, the assessee is not supposed to pay the duty. However, in the present case, the exemption under Sr. No. 93 of notification 04/2006-CE bears the condition. Therefore, the condition of sub section 1A of section (1A) is not applicable in the present case. The appellant had option either to avail the exemption under Sr. No. 93 or otherwise. Moreover, the appellant have cleared the goods on payment of duty. Therefore, Cenvat Credit cannot be denied. The judgment of this Tribunal in the case Balkrishna Paper Mills Ltd.(supra) is directly on the issue. Accordingly, the demand of Cenvat Credit raised by the lower authorities is not sustainable. Hence, the impugned order stands modified. Appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha