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

REGIONAL BENCH- COURT NO.3

Excise Appeal No. 156 of 2012

(Arising out of OIA-198/2011/AHD-III/KANPAZHAKAN/COMMR-A-/AHD passed by Commissioner of Central Excise-AHMEDABAD-III)

Messrs Well Pack Papers & Containers Ltd **........Appellant**
Kalol Vamaj Road,
Village : Vamaj, Taluka : Kadi,
Mehsana, Gujarat-382734.

VERSUS

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

APPEARANCE:
Sh. S. Bissa, Advocate for the Appellant
Sh. T. K. Sikdar, Assistant Commissioner (AR) for the Respondent

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

Final Order No. A/ 12019 /2019

DATE OF HEARING: 16.10.2019
DATE OF DECISION:16.10.2019

RAMESH NAIR

The brief facts of the case are that whether the appellant are engaged the manufacture of Draft paper and paper board availing exemption Notification No. 4/2006-CE under Serial No.91 and paying duty at the concessional rate of 4%. The case of the department is that under the same Notification at Serial No. 90 the goods are exempted attracting nil rate of duty, therefore, the appellant was supposed to avail the exemption under Serial No.90, accordingly no duty was required to be paid, consequently, cenvat credit availed by the appellant is not correct, hence, the demand of cenvat credit was confirmed by the lower authority.

2. Sh. S. Bissa, Ld. Counsel, appearing on behalf of the appellant submits that this very issue has been settled by this Tribunal in case of M/s. Balkrishna Paper Mills Ltd.-2015 (329) ELT 468 (Tri.-Mumbai)

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

4. Heard both the sides and perused the records.

5. On going through the Notification No. 4/06-CE at Serial No. 90. We find that it exempts from the whole of the payment of excise duty, such exemption is subject to compliance of the conditions No. 10, since, the appellant availed the exemption which is conditional, it is optional for the assessee to avail the exemption or to clear the goods on payment of duty. It is not mandatory on the part of the appellant to compulsorily avail the exemption of nil rate, therefore, the appellant opted for exemption of concessional rate of duty i.e. under Serial No. 91 which is correct and legal. This issue has been considered by this Tribunal in the judgement cited by the Ld. Counsel in the case of M/s. Balkrishna Paper Mills Ltd (Supra) wherein it was held that since, the exemption under Serial 90 is conditional it is not compulsion on the assess to avail such exemption, hence correctly availed exemption under Serial No. 91 and paid the excise duty, consequently they are entitled for the cenvat credit. More over since, undisputedly appellant have discharged the excise duty on the final product, whether it is payable or otherwise they are entitled for the cenvat credit.

6. In view of our above observation the impugned order is set aside. Appeal is allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi