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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 261 of 2012 - DB

(Arising out of OIO-AHM-CEX-003-COM-004-12 dated 31/01/2012 passed by Commissioner of Central Excise-AHMEDABAD-III)

Rainbow Papers Ltd **........Appellant**
Survey No. 1453, Vill-Rajpur, Taluka-Kadi,
Kalol-Mehsana Highway,
Mehsana, Gujarat

VERSUS

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

APPEARANCE:
Shri Devashish K Trivedi, Advocate for the Appellant
Shri Prabhat K Rameshwaram, Commissioner (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L. MAHAR

Final Order No. A/ 12210 /2023

DATE OF HEARING: 14.07.2023
DATE OF DECISION: 05.10.2023

RAMESH NAIR

The brief facts of the case are that the appellant has availed the exemption Notification No. 04/2006-CE under Sr. No. 91 which prescribes the concessional rate of duty of 4% with condition No. 11. Accordingly, they have availed the cenvat credit on inputs.

1.2 The case of the department is that since there is an exemption to the same goods i.e. papers or paper boards under Sr. No. 90 which prescribed nil rate of duty, the appellant was supposed to avail such notification mandatorily. The contention of the department is that the exemption under Sr. No 90 is absolute exemption in terms of Section 5A (1A) of Central Excise Act, 1944, the appellant had no option except to opt for notification. Accordingly, the goods being under nil rate of duty, the appellant is not entitled for the cenvat credit. Accordingly, the cenvat credit was disallowed.

2. Shri Devashish K Trivedi, learned Counsel appearing on behalf of the appellant submits that the final product of the appellant i.e. Paper or paper board is covered under two exemption notifications one is under Sr. No. 90 and other is Sr. No 91 of Notification No 04/2006 – CE. He submits that both the entries are conditional, therefore, in such case it is an option to the assessee to avail any of one. The contention of the revenue is absolutely incorrect that the exemption under Sr. No. 90 which attracts a nil rate of duty is unconditional. Therefore, the demand on this base of cenvat credit is not sustainable. He submits that the issue is clearly covered by this Tribunal's decision in the case of Balkrishna Paper Mills Ltd vs. Commissioner of C.Ex., Thane –I – 2015 (329) ELT 468

3. Shri Prabhat K Rameshwaram, Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the limited issue to be decided in this case is that availing the cenvat credit by the appellant where the appellant has availed the option of Sr No. 91 of Notification 04/2006 – CE is correct or they were mandatorily required to avail the exemption under Sr. No. 90 of the same Notification. Before making any conclusion it is necessary to read both exemption entries which are reproduced below:-

90.	48	Paper and paperboard or articles made therefrom manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags.	Nil	10

91.	48	Paper and paperboard or articles made therefrom manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags.	8%	11

4.1 From the plain reading of the above exemption notification entries it is clear in our mind that both exemption entries carry conditions for allowing either nil rate of duty or 4 % of duty therefore there is no doubt that both the exemption entries are conditional. The contention of the Revenue is based on Section 5A (1A) which prescribes that in case of absolute exemption the asseessee has no option except to avail such exemption. In the present case, as discussed above, both the exemption entries are subject to certain conditions therefore both the entries have absolute exemption. In this position it is an option to the appellant to choose any one of the exemption entries. Therefore, in the present case the appellant has chosen to avail the exemption under Sr No. 91 is absolutely legal and correct.

4.2 The identical issue related to the same product and involving the same exemption notification has been considered by this Tribunal in the case of Balkrishna Paper Mills Ltd (Supra) wherein the Tribunal has passed the following order :-

*"**6.** For proper appreciation of the dispute, we reproduce the relevant entries and conditions of Notification 4/2006 :-*

90.	*48*	*Paper and paperboard or articles made therefrom manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags.*	*Nil*	*10*
91.	*48*	*Paper and paperboard or articles made therefrom manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp*	*8%*	*11*

		made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags.		
92.		……………….	..	…
93.	4802, 4804, 4805, 4807, 4808 or 4810	All goods	8%	—

ANNEXURE

10.	(1)	This exemption shall apply only to the paper and paperboard or articles made therefrom cleared for home consumption from a factory, in any financial year, up to first clearances of an aggregate quantity not exceeding 3500 Metric Tonnes.
	(2)	The exemption shall not be applicable to a manufacturer of the said goods who avails of the exemption under the notification of the Government of India in the Ministry of Finance and Company Affairs (Department of Revenue) No. 8/2003-Central Excise, dated the 1st March, 2003.
	Explanation.- For removal of doubts, it is hereby clarified that the first clearances of an aggregate quantity not exceeding 3500 metric tonnes shall not include clearances of any paper and paperboard or articles made therefrom which attract nil rate of duty or are exempt from the whole of Excise duty under any other notification.	
11.	(1)	The exemption shall not be applicable if the factory in which the said goods are manufactured has a plant attached thereto for making bamboo or wood pulp.
	(2)	The exemption shall not be applicable to a manufacturer of the said goods who avails of the exemption under the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 8/2003 - Central Excise, dated the 1st March 2003.

It would be seen from the above table that serial No. 93 prescribes the duty rate without any conditions whatsoever. Further; serial No. 91 prescribes duty rate subject to condition at serial No. 11. There are two conditions attached the said serial number. The first condition is that this exemption shall not be applicable if the factory in which the said goods are manufactured has a plant attached thereto for making bamboo or wood pulp. The second condition is the manufacturer who avails the exemption under Notification 8/2003-C.E., dated 1-3-2003 *will not be eligible for the present exemption. Serial No. 90 prescribes nil rate of duty. Further, the nil rate of duty is subject to two conditions prescribed under serial No. 10. The first condition is that nil rate is applicable in any financial year up to first clearances of an aggregate quantity not exceeding 3500 MT. The second condition is that the manufacturer shall not be availing the benefit of Notification 8/2003-C.E., dated 1-3-2003. The Revenue's contention is that for the initial clearance of 3500 MT, the rate of duty is nil and there are no conditions for the said clearance and hence the provisions of Section 5A(1A) will come into play. The relevant portion of Section 5A is reproduced below:-*

"Section 5A. Power to grant exemption from duty of Excise. - *(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the notification, excisable goods of any specified description from the whole or any part of the duty of Excise leviable thereon:*

……

(1A) For the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of Excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of Excise on such goods."

It would be seen from the said Section 5A that the Central Government is empowered to exempt generally either absolutely or subject to such conditions (to be fulfilled before or after removal) as may be specified in the Notification from the whole or any part of the duty. Further, a reading of Section 5A(1A) shows that for the removal of doubts, it is hereby declared that where an exemption under sub-section (1) in respect of any excisable goods from the whole of the duty of Excise leviable thereon has been granted absolutely, the manufacturer of such excisable goods shall not pay the duty of Excise on such goods. Thus, a bare reading of the above Section indicates that a manufacturer will not have an option to pay the duty only where the goods are exempt and the exemption granted is absolute. In the present case, serial No. 90 has two conditions. The first condition limits exemption for goods cleared for home consumption from a factory in any financial year upto first clearances of an aggregate quantity not exceeding 3500 MT. Further, there is another condition about non-availment of Notification 8/2003. In our view, in view of the above mentioned two conditions, it cannot be said that serial No. 90 provides absolute exemption to paper and paper board or articles made therefrom manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags.

7. *In the result, we hold that the appellant-assessees cannot be forced to pay duty as per serial No. 90 of Notification 4/2006 and they have option to pay the duty under other numbers, viz. 91 and 93. Since we have taken the view that the appellant cannot be forced to pay the duty under nil rate vide serial No. 90, the other aspects raised in all the show cause notices as also the Revenue's appeal fall flat.*

8. *In view of the above position, the appellant-assessees' appeals are allowed and the Revenue's appeal is dismissed."*

4.3 In view of the above decision and our observation made herein above there is no doubt that the appellant has availed the exemption under

Sr. No 91 correctly and legally. Consequently, they are entitled for the cenvat credit under Cenvat Credit Rules, 2004.

5. Accordingly, the impugned order is not sustainable, hence, the same is set aside. Appeal is allowed.

(Pronounced in the open court on 05.10.2023)

RAMESHNAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

Geeta