IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. E/1141/2011 & 4035/2012-EX[DB]

Sr. No.	Appeal No.	Appellant	Respondent	Impugned Order
1.	E/1141/2011-EX[DB]	M/s Yash Paper Limited	Commissioner Central Excise & Service Tax, Allahabad	O-I-O No. MP (Dem-67/2010) 03 of 2011 dated 31.01.2011 passed by Commissioner of Central Excise & Service Tax, Allahabad
2.	E/4035/2012-EX[DB]	M/s Yash Papers Limited	Commissioner of Central Excise, Allahabad	O-I-O No. MP (Dem.-43/2011) 27 of 2012 dated 17.09.2012 passed by Commissioner, Central Excise & Service Tax, Allahabad

Appearance:

Shri B.L. Narasimhan (Advocate) & Shri Utkarsh Malviya (Advocate) for Appellant(s)
Shri Pawan Kumar Singh (Supdt.) AR for Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 24/07/2018
Date of Decision : 24/07/2018

FINAL ORDER NOs **71620-71621 / 2018**

Per: Ashok Jindal

The appellant is in appeal against the impugned orders wherein Cenvat Credit sought to be denied at the time of opting Exemption under Notification No. 04/2006-CE dated 01.03.2006 at Sr.90.

2. The common facts of both cases are that the appellant is a manufacturer of paper and paper board which are cleared on payment of duty. The appellant has also availing Cenvat Credit on inputs and services and paying of duty on the goods manufactured by the appellant. W.e.f. 01.04.2009, the appellant sought to avail the benefit of exemption in respect of paper and paper board manufactured and cleared by them at Sr.90 of Notification No. 04/2006-CE dated 01.03.2006. Exemption under the said notification is available to the appellant upto the clearance of 3500 MT per year if the raw materials used to manufacture in the said goods is made from unconventional raw materials, for that there is no dispute.

3. Thereafter, the facts of the case in both appeals are little bit different, therefore, the same are incorporated separately as under:-

Appeal No. E/1141/2011-EX[DB]

In this appeal, the appellant opted for exemption as cited hereinabove w.e.f. 01.04.2009 and at the time of opting of exemption, the appellant reversed the Cenvat Credit on the inputs, semi finished goods and finished goods lying in their stock as on 01.04.2009. After reversing the Cenvat Credit, there is some Cenvat Credit lying the Cenvat Credit account. After crossing the limit of 3500 MT in the said particular year, the appellant availed the Cenvat Credit lying utilized in their

Cenvat Credit account as on 01.04.2009 after reversal and utilized of the same for payment of duty in the remaining year. The case of Revenue is that in terms of Rule 11(3) of Cenvat Credit Rules, 2004, the credit should lapse on the date of opting for exemption, therefore, they are not entitled to utilize the Cenvat Credit lying unutilized Cenvat Credit after reversal of Cenvat Credit on inputs, semi-finished goods and finished goods lying in their stocks. Therefore, the demand sought to be confirmed by issuance of the show cause notice dated 08.07.2010 for the period April, 2009 to March, 2010.

Appeal No. E/4035/2012-EX[DB]

The appellant has opted for exemptions on 01.04.2010 and reversed the Cenvat Credit on inputs, semi finished goods and finished goods lying in the stock. As on the date of opting exemption, Cenvat Credit lying in the Cenvat Credit account unutilized has been utilized by the appellant after crossing the limitation of clearance 3500 MT in June, 2010 payment of duty on paper and paper boards, the case of the Revenue is that the appellant is not entitled to avail the said Cenvat Credit in terms of Rule 11(2) of the Cenvat Credit Rules, 2004. Therefore, the show cause notice dated 03.08.2011 was issued for the period from April, 2010 to March, 2011 by invoking the extended period of limitation.

Both the show cause notices were adjudicated the Cenvat Credit availed by the appellant was denied. Consequently, the same were demanded from the appellant alongwith interest and penalties were imposed. Against the said orders, the appellant is before us.

3. Heard the parties.

4. Both the appeals are dealt with separately as different provisions have been invoked for both the appeals.

Appeal No. E/1141/2011-EX[DB]

In this case Cenvat Credit sough to be denied in terms of Rule 11(3) of Cenvat Credit Rules, 2004. For better appreciation. The provisions of Rule 11(3) are reproduced as under:-

"(3) A manufacturer or producer of a final product shall be required to pay an amount equivalent to the CENVAT credit, if any, taken by him in respect of inputs received for use in the manufacture of the said final product and is lying in stock or in process or is contained in the final product lying in stock, if, -

(i) He opts for exemption from whole of the duty of excise leviable on the said final product manufactured or produced by him under a notification issued under Section 5A of the Act; or

(ii) The said final product has been exempted absolutely under Section 5A of the Act, and after deducting the said amount from the balance of CENVAT credit, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any other final product whether cleared for home consumption or for export, or for payment of service tax on any output service, whether provided in India or exported."

As per the provisions of Rule 11(3) of the Rules, if assessee opts for exemption from whole of the duty of excise leviable on the final product manufactured or produced by him, the appellant is required to pay an amount equivalent to the Cenvat Credit pertains to the inputs, semi finished goods and finished goods lying in their stock on the date of opting for exemption. Admittedly the appellant has reversed the Cenvat Credit on inputs, semi finished goods and finished goods lying in their stock on 01.04.2009.

As per Rule 11(3)(ii), if the final goods is exempted **<u>absolutely</u>** then the whole of the credit lying in Cenvat Credit shall lapse.

Admittedly, in the case in hand, the product manufactured by the appellant is exempt conditionally as Notification No. 04/2006 dated 01.03.2006 at Sr. No. 90 exempts the goods manufactured by the appellant upto 3500

MT. Therefore, the exemption under the said notification is not **absolute**. In that circumstances, the provisions of Rule 11(3)(ii) of the Rules are not applicable to the facts of this case and the condition of Rule 11(3)(i) of the Rules has been complied with by the appellant.

In that circumstances, relying on the decision in the case of Jansons Textile Processors vs. Commissioner of Central Excise & ST, Salem reported at 2018-VIL-493-CESTAT-CHE-CE vide Final Order No.42004/2018 dated 11.07.2018, the appellant is not required to reverse the Cenvat Credit lying in their Cenvat Credit account unutilized after reversal of the Cenvat Credit on input, semi finish goods and finished goods lying in their stocks on 01.04.2009. Therefore, no demand is sustainable against the appellant. Accordingly, the impugned order is set aside and the appeal is allowed with consequential benefit, if any.

Appeal No. E/4035/2012-EX[DB]

We find that on the identical issue, a show cause notice was issued on 08.07.2010 to the appellant for the earlier period and admittedly, the Cenvat Credit has been utilized by the appellant in the month of June, 2010 for payment of duty of the said month. In that circumstances, the show cause notice issued to the appellant on 03.08.2011 is barred by limitation, as the availment of Cenvat Credit was well known to the Department in advance. Therefore, the extended period is not invokable in the light of the decision of the Supreme Court in the case of Nizam Sugar Factory vs. Collector of Central Excise, A.P. reported at 2008 (9) S.T.R. 314 (S.C.). Therefore, the demand against the appellant is not sustainable as the whole demand is barred by limitation. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief.

5. In result, both the appeals are allowed.

(Dictated & pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

Ankit