CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71203/2016-SM[BR] dated 18/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/54871/2014	**TEHRI PULP & PAPER LTD** 9TH KM. STONE, BHOPA ROAD, MUZAFFARNAGAR UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT,UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

P. R. MULLICK, ADVOCATE
27-RACE COURSE,
DEHRADUN,
UTTARAKHAND

4. Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi 110070
11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38
12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. 2

APPEAL No. E/54871/2014-EX[SM]

(Arising out of Order-in-Appeal No. 171-CE/APPL/MRT-I/2013 dated 20/12/2013 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s Tehri Pulp & Paper Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Meerut-I

Respondent

Appearance:

Shri Pulak Raj Mullick, Advocate, for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 18/11/201
FINAL ORDER NO.......71203/2016

Per: Anil G. Shakkarwar

The present appeal is filed by the appellant, M/s Tehri Pulp & Paper Ltd., against Order-in-Appeal No. 171-CE/APPL/MRT-I/2013 dated 20/12/2013 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I.

2. The brief facts of the case are that the appellant were issued with a Show Cause Notice dated 30/03/2012 wherein there were two demands, one was related to demand of inadmissible Cenvat credit amounting to Rs.28,18,868/- availed on Shapes & Sections, Sheets, M.S. Plate, M.S.

Channels, Beam, M.S. Angle & M.S. Grinder etc. under Rule 15(2) of Cenvat Credit Rules, 2004. The other demand was in respect of differential Central Excise duty on Core Pipes manufactured and consumed within the factory. The appellant submitted before the Original Authority that the said inputs such as Shapes & Sections, Sheets, M.S. Plate, M.S. Channels, Beam, M.S. Angle & M.S. Grinder etc. were consumed towards fabrication of Conveyor System, Boiler-turbine House & Kraft Paper Plant, which was installed in the expansion programme. In respect of demand on Core Pipe, they submitted before Original Authority that the Core Pipe was used for binding & wrapped over it their final product and final product is sold on the basis of weight and price is charged on the basis of weight and therefore Core Pipe suffers duty and that Core Pipe was admissible for exemption under Notification No. 67/95-CE dated 01/03/1995. The Original Authority has held that admissibility of Cenvat Credit on Shapes & Sections, Sheets, M.S. Plate, M.S. Channels, Beam, M.S. Angle & M.S. Grinder etc. will mainly depend upon the fact that whether the said items were actually used by the appellant in their plant to fabricate and manufacture the machines. They had also submitted that the specific use for the purpose of such items, in different parts of plant, along with quantity of such item used towards the said purpose. The Original Authority has, further, held in Order-in-Original No. 48/ADC/MRT-I/2013 dated 31/03/2013 through which the said Show Cause Notice dated 30/03/2012 was adjudicated that the appellant at the time of personal hearing on 20/12/2013, changed their stands completely stating that the said items were used in fabrication of Conveyor System, Boiler-turbine House & Kraft Paper Machine No. 2 as compared to the information giving by them about the uses of said items through their letter dated 30/12/2011. Therefore, he did not allow the Cenvat credit on said items and confirmed the demand of Rs.28,18,868/-. He also confirmed the demand of duty on Core Pipe. The appellant preferred appeal before Commissioner (Appeals) who was decided the same through Order-in-Appeal No. 171-CE/APPL/MRT-I/2013 dated 20/12/2013. In respect of Shapes & Sections, Sheets, M.S. Plate, M.S. Channels, Beam, M.S. Angle & M.S. Grinder etc., the First Appellate Authority through the said Order-in-Appeal has held that there was no evidence on record included in certificates of the Chartered Engineers to reflect the design specification of machine parts and accessories thereof fabricated, its description and Tariff Heading No. 48043100, so as to ensure its eligibility under capital goods from the definition provided under Rule 2(a) of Cenvat Credit Rules, 2004. Through the said Order-in-Appeal Order-in-Original ~~were~~ was upheld and appeal was dismissed. Aggrieved by the said Order-in-Appeal dated 20/12/2013 the appellant has preferred appeal before this Tribunal.

3. Heard the ld. Counsel for the appellant. He has submitted that in respect of Core Pipe, Core Pipe is manufactured out of the Kraft Paper in their unit. Kraft Paper is bind round Core Pipe and when Kraft Paper is sold, it is sold on the basis of weight and duty is paid on gross weight as a result Core Pipe also suffers duty equal to Kraft Paper. Further Core Pipe is eligible to avail benefit of Notification No. 67/1995-CE for captive consumption. He has further argued that even if higher duty levied on Core Pipe, is paid then such higher duty is eligible to be availed as Cenvat credit. Therefore, such exercise will be futile. Therefore, he has prayed for setting aside the Order-in-Original in respect of Core Pipe. In respect of Shapes & Sections, Sheets, M.S. Plate, M.S. Channels, Beam, M.S. Angle & M.S. Grinder etc. he has submitted that 15% of those items were used in laying foundation and 85% of them were used for fabrication of capital goods and that under Rule 2(k) of Cenvat Credit Rules, 2004, even after amendment as on 07/07/2009, if inputs falling under Chapter 72 & 73 are used for manufacturing of capital goods, Cenvat credit is admissible on them. He submitted that they once again got a detailed Post Work Study through A.K. Kakar, BSc. BE (Civil), Chartered Engineer and report dated 31/07/2014 given by him was submitted in Appeal Paper Book at Page 287 onwards. The ld. Counsel had contended that now the certificate issued by Chartered Engineer reflects the design, specification of

machines, parts thereof, accessories thereof, fabricating and its description etc. is available with them which was submitted in the Appeal Paper Book, therefore their claim may be allowed.

4. The ld. D.R. has supported the impugned Order-in-Appeal.

5. Having considered the rival contentions, I find that in so far as the, demand of differential duty on Core Pipe is concerned, the assessee is paying duty on Core Pipe & taking Cenvat credit of the said duty paid would be the futile exercise and by invoking such exercise exchequer will be not be benefitted. Therefore, I hold that the said Show Cause Notice, in so far as the demand of Rs.6,63,442/- in respect of differential duty on Core Pipe is concerned the same is not sustainable. In so far as the demand in respect of Cenvat credit availed on inputs such as Shapes & Sections, Sheets, M.S. Plate, M.S. Channels, Beam, M.S. Angle & M.S. Grinder etc. which is tune of Rs.28,18,868/- under Rule 15(2) of Cenvat Credit Rules, 2004 is concerned the First Appellate Authority did not have the advantage of going through the evidence which was placed before this Tribunal. Therefore, in view of the observation of the First Appellate Authority that the evidence to reflect design, specification of machine, parts thereof, accessories thereof fabricat~~ing~~ed was not available to him ~~how~~ now that the evidence including the certificate issued by A.K. Kakar, BSc. BE (Civil), Chartered Engineer reported on

31/07/2014 to reflect the design, specification of machines, parts thereof, accessories thereof, fabrica~~ting~~ ted and its description etc. was available, he may examined the issue after giving opportunity to the appellant to present their case. So as to enable ld. Commissioner (Appeals) to do so, I remand that part of the case to him.

6. Thus, the part of the appeal is allowed and part of the appeal is allowed by way of remand.

(Dictated and pronounced in Court)

Sd/-

(Anil G. Shakkarwar)
Member (Technical)

प्रमाणित प्रति / Certified True Copy
6.1.17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari