FAX : 0532-2400149 REGISTERED / AD

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

Dated: 30/01/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70075/2017-EX[DB] dated 19/01/2017

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

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/18/2008	**OTR PAPERS PVT. LTD.** B - 3 & 4, INDUSTRIAL AREA SIKANDRABAD, DIST-BULANDSHAHR, UP
		Name and Address of Respondent
2		-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Copy To
3Advocate(s) / Consultant(s):

Brahmadutta Chamber of Low
111-112, G.C. Complex, Naya Bans, Sector-15, Opposite Nirulas Hotel, Noida.

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

7 Company 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. I

APPEAL No.E/18/2008-EX[DB]

(Arising out of Order-in-Appeal No. 105-CE/NOIDA/2007 dated 20/09/2007 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

For approval and signature:

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

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

M/s OTR Papers Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Hrishkesh, Amicus Curie (Advocate) for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 19/01/2017
Date of Decision : 19/01/2017

FINAL ORDER NO.-70075/2017...........

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Appeal No. 105-CE/NOIDA/2007 dated 20/09/2007.

2. The only issue in this appeal filed by the appellant-assessee is, that he is a registered manufacturer of uncoated Kraft paper, whether the assessee have rightly claimed the benefit of concessional rate of duty in clearance of the products under Serial No. 86 of Notification No. 6/2002 for the first 3500 MT of clearance and thereafter, in the same financial year by availing benefit of Serial No. 86(A) of the same Notification No. 6/2002, as amended by Notification No. 48/2004, have rightly paid duty at the concessional rate of 12% instead of paying duty at the rate of 16%–Tariff rate.

2. The admitted facts are that the appellant is a manufacturer of uncoated Kraft paper under chapter sub-heading No.48045900 of the first schedule to Central Excise Tariff Act, 1985. The appellant cleared first 3500MT of their product at the concessional rate of 8% as permissible under Serial No.86 of Notification No.06/2002 up to 18th January, 2005. Thereafter, the appellant cleared their uncoated Kraft paper at the rate of 12% under serial No.86(A) of the said notification as amended. Vide show cause notice dated 25/01/2007 this was objected to by revenue, as it appeared to revenue that appellant could

avail benefit only under one entry either under Serial No.86 or 86(A) in a given financial year and not under both the entries in the same financial year. Accordingly, differential duty was demanded amounting to Rs.02,13,913/-. The SCN was adjudicated vide Order-in-Original, on contest, dated 07/06/2007 confirming the proposed demand with interest and equal amount of penalty was imposed under Rule 25 of Central Excise Rules, 2002. Being aggrieved the appellant-assessee preferred appeal before learned Commissioner (Appeals) who was pleased to allow the appeal in part holding that the appellant was not entitled to seek the benefit under both the Serial Nos. that is 86 and 86(A) of the notification in the same financial year. However, Learned Commissioner (Appeals) was pleased to reduce the quantum of penalty to Rs 55,000/-. Being aggrieved the appellant is before this Tribunal.

3. Heard the learned Amicus Curie Mr. Hrishikesh, for the appellant and learned A.R. for the Revenue.

4. As pointed out by learned Amicus Curie, we fine that the issue herein is squarely covered by the precedent decision of Division Bench of this Tribunal in the case of Karanja industries Vs Commissioner of Central Excise, 2010 (251) ELT 115 (Tri.-Bang.) wherein considering the same notification and the same entries, this Tribunal held that, from the conditions and reading of the entries 86 and 86(A), it is very clear that benefit of Serial No.86 and 86(A) can be availed by the assessee if he fulfills the conditions as mentioned. If that be so, the appellant's claim for benefit of lesser rate of duty of

12% as mentioned under Serial No.86(A) of the Notification No.06/2002, cannot be denied by the revenue as condition No.14(A) does not put any restriction on the availment of such benefit if the assessee had availed the benefit under Serial No.86. The only condition is that the assessee should not avail the SSI benefits as indicated in Notification No.8/2003 and/or 9/2003 which is not the case in this appeal. The Tribunal had also relied on the Ruling of Hon'ble Karnataka High Court in the case of West Coast paper Mills Ltd. Vs Union of India reported at 2007 (212) ELT 305 (Kar.) wherein the Hon'ble High Court had held in respect of this very notification–no doubt the notification makes the classification between paper and paperboard manufacturing factories with pulp units based on wood or bamboo pulp unit attached to them or without them. While the units without them get further concessional rate of 12% duty over and above the initial exemption granted under Sl. No. 86 of the exemption notification of the year 2002, right up to the initial production of 3500 MT at the rate of 8% (concessional), thereafter, the condition No. 14 (A) in respect of the Notification of the year 2004 has to be complied with. Accordingly, it was held by this Tribunal that an assessee can claim the benefit under both the serial Nos. 86 and 86(A) in the same financial year if an assessee meets the conditions prescribed therein.

5. Under the admitted facts, we find that there is no dispute that the appellant does not fulfill the conditions under both the serial Nos. 86 and 86(A). The only dispute of revenue was that the assessee

cannot claim benefit under both the entries or serial numbers. Accordingly, following the precedent Ruling of this Tribunal in the case of Karanja Industries (supra), we allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefits in accordance with law. We also appreciate the assistance provided by Mr. Hrishikesh as Amicus Curie, to this Bench.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

-Sd/-
(ANIL G. SHAKKARWAR)
Member (TECHNICAL)

akp

प्रमाणित प्रति / Certified True Copy
8.2.17
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