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: **26/07/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70529/2016-EX[DB] dated 05/07/2016

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/Stay/2298/2007	E/2643/2007	**CHADDHA PAPER MILLS LTD.** THE GENERAL MANAGER M/S CHADDHA PAPER MILLS LTD. BILASPER , RAMPUR
			Name and Address of Respondent
2			-C.C.E. MEERUT II OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)

Copy To

3Advocate(s) / Consultant(s):

KAPIL VAISH
2ND FLOOR, PART-A KRISHNA JANKI
PALACE, 35-C, RAMPUR GARDEN,
CIVIL LINES, BAREILLY, UP

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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd,(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Ex. Appeal No.2643/07

Arising out of O/A No. 135-CE/MRT-II/2007 dated 29.06.2007 passed by Commr. (Appeals) of Central Excise, Meerut II.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	: No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	: Yes
3.	Whether His Lordship wishes to see the fair copy of the Order?	: Seen
4.	Whether Order is to be circulated to the Departmental Authorities?	: Yes

M/s Chadda Paper Mills Ltd. ...APPELLANT(S)

VERSUS

Commr. of C.Ex. Meerut II RESPONDENT (S)

APPEARANCE

None, for the Appellant (s)
Shri Kamal Puggal, Asstt Commr (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 05.07.2016

Final ORDER NO. 70529/2016

Per Mr. Anil Choudhary :

The appellant, M/s Chadda Paper Mills Ltd. is in appeal against the O/A No. 135-CE/MRT-II/2007 dated 29.06.2007 passed by Commr. (Appeals) of Central Excise, Meerut II.

2.1 The brief facts of the case are that the appellant assessee is the manufacturer of MG Kraft paper falling under heading No.4804.90 and core pipe falling under heading No. 4822.00 of the CETA 1985. During the period in dispute from April, 2002 to 16 June, 02, the appellant was eligible for exemption from payment of duty under Notification No. 06/2002-CE dated 01.03.2002 on their first clearance up to 3500 M.T. of paper and paperboard or articles made therefrom. The condition in the notification was that the goods starting from stage of pulp, should contain not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds or rags.

2.2 That as per condition No. 14 of the said notification, the exemption shall apply only to the paper and paperboard or articles made therefrom cleared for home consumption in any financial year, up to first clearances of an aggregate quantity not exceeding 3500 MT. The appellant have been manufacturing MG Kraft paper from non-conventional raw material (waste paper, etc.).

2.3 The said Kraft Paper was cleared or sold from the factory and was also used for manufacture of core pipe which was used for packing of Kraft paper.

2.4 The show cause notice dated 5.05.2006 was issued alleging that the appellant have manufactured and consumed 36.55 MT core pipe as input for captive consumption without payment of duty. The goods

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cleared, i.e., core pipe, was valued at Rs. 5,26,750 involving central excise duty amounting to Rs.84,280/-, the said SCN was issued as it appeared to Revenue that on the core pipes manufactured and captively used, the duty was payable as benefit of notification No. 67/95-CE was not available when final goods were cleared without payment of duty. As the appellant had cleared Kraft paper without payment of duty under Notification No. 06/2002-CE, they were liable to pay duty on the value of core pipe being an intermediate product.

2.5 The appellant contested the SCN stating that there is no application of Notification No. 67/95-CE and they have also not claimed any benefit under the said notification. Further, the core pipe which is also made of Kraft paper, is not an intermediate product, but at best packing material and is a finished product itself, which have been cleared along with Kraft paper, the appellant have included the weight of core pipe with the Kraft paper cleared under the overall permissible limit of 3500 MT per financial year.

2.6 Vide O/O dated vide 23.02.06 the Asstt. Commr. dropped the proceedings observing that core pipe do not come in existence first, and thus, cannot be captively consumed in the manufacture of Kraft paper. Further, Kraft paper and core pipe both fall under chapter heading 48 to the schedule of CETA. Kraft paper cannot be cleared without being rolled on the core pipe. It was also held that the provisions of Notification No. 67/95, were not applicable in the facts of this case. He also states that core pipe falls under articles of paper, it is also exempted under Notification No. 6 of 2012.

3. Being aggrieved, the Revenue preferred appeal before the Ld. Commissioner (Appeals), who was pleased to allow the appeal of Revenue observing that it is uncontroverted fact that 36.55 MT of core pipe was captively consumed by the appellant for the purpose of winding of Kraft paper. The appellant have not claimed benefit of exemption under the Notification No.67/95-CE nor they have concurrently established that core pipe is not intermediate goods unlike the departments averment. Thus, holding core pipe to be intermediate product held that the appellants are liable to tax in terms of notification No. 67/95-CE. It was also held that core pipe being a complete final product will be subject to duty even it not sold and used captively within the same factory.

4. Being aggrieved, the appellant is before this Tribunal on the ground that the order of the Ld. Commissioners (Appeals) is vitiated as it seeks to impose Notification No. 67/95-CE on the appellant, under which the appellant have not claimed any benefit. Thus, the notification not being resorted to by the appellant, the Revenue cannot force it upon the appellant. He further contents that the order of Commissioner (Appeals) is actually wrong as the appellant have included the weight of core pipe in the weight of paper cleared and have observed the overall clearance limit of 3500 MT. Further, core pipe is also an article made of paper/ Kraft paper and is therefore, entitled for exemption under Notification 06/2002. Notification No.67/95-CE is the separate exemption notification for intermediate goods manufactured before final taxable output, and the same cannot be enforced on the appellant. Further, it is admitted case that the

appellant have not cleared more than 3500 MT the permissible limit under Notification No. 06/02. Accordingly, he prays for setting aside the impugned order.

5. The Ld. A.R. for the Revenue relies on the impugned order.

6. Having considered the rival contentions, we find that the Ld. Commissioner (Appeals) have erred in imposing the application of notification No. 67/95-CE wherein it has no application in the facts of this case, wherein the appellant have claimed exemption under a different notification being 06/02-CE. We also hold that the said two exemption notifications are not correlated under any provisions of the Act or the Rules. Further, the order of Ld. Commissioner (Appeals) is vitiated as he has wrongly concluded that 36.5 MT of core pipes have been captively consumed, whereas the fact is that neither the core pipe is intermediate product nor it can be said to be captively consumed, as first Kraft paper comes into existence and thereafter, from Kraft paper, core pipe is manufactured for packing purposes. Further, the appellant have included the weight of core pipe in the weight of paper cleared. Accordingly, we allow the appeal with consequential relief to the appellant. The impugned order is set aside.

(Pronounced in the open Court)

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

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Sharma

प्रमाणित प्रति / Certified True Copy
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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