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: 16/05/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70478/2017-SM[BR] dated 20/03/2017

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/2034/2009	**Ms N S Papers Ltd** 8th Km Jansath Road, Muzaffarnagar-251001.
		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):

SHRI ATUL GUPTA, (ADV.)
3/1A/3 OPP AUTO SALES,Above the Office Of Blue Dart/DHL Courier, COLVIN ROAD, LOHIA MARG ALLAHABAD-211001

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/2034/2009-EX[SM]

(Arising out of Order-in-Appeal No. 46-CE/MRT-I/2008 dated 31/03/2009 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s N S Papers Ltd. (formerly Rana Papers Ltd.) **Appellant**

Vs.

Commissioner of Central Excise & S.T.-Meerut-I **Respondent**

Appearance:

Shri Atul Gupta (Advocate) for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Date of Decision : 20/03/2017

FINAL ORDER NO....70478/2017........

Per: Anil Choudhary

The issue in this appeal filed by the appellant assessee is whether the demand of Central Excise Duty amounting to Rs. 31,32,442/- under Rule 8 (3A) of the Central Excise Rules, 2002 (CER) have rightly been demanded with interest along with imposition of penalty of Rs. 8 lakhs under Rule 25 (1) (a) of the CER read with Rule 8 (3A) of the Rules, 2002.

2. The brief facts are that the appellant is a manufacturer of Kraft Paper/Kraft Liner and M.S. Ingots. On scrutiny of the ER-I returns for the period of October, 2006 to December, 2006 in respect of their Paper Division, it appeared that the appellant have violated the provisions of Rule 8(3A) of C.E.R. 2002 in as much as they did not pay the Central Excise Duty amount of Rs. 2 lakhs on the goods cleared during the month of October, 2006, by the due date i.e. 05.11.2006. They even did not pay this amount within 30 days from the due date i.e. by 05.12.2006. The appellants paid this amount along with interest on 18.12.2006 vide TR6 Challan of the same date for Rs. 2,13,505/- It appeared to revenue that in view of the provisions of Rule 8(3A), w.e.f. 06.12.2006 to 18.12.2006, the appellant was required to pay duty on consignment basis and without utilizing the Cenvat Credit. Accordingly vide Show-Cause-Notice dated 17.12.2007, for the default in payment of duty in due time, as provided under Rule 8 (3A), of C.E.R 2002, duty was demanded Rs. 31,32,442/- along with interest and further penalty was proposed. In response to the Show-Cause-Notice the appellant among other grounds stated as per the ER-I return of Paper Division for the month of October, 2006 reveal that the appellant factory was having sufficient closing balance of Rs. 4,34,896/- in Cenvat account for the month of October, 2006. There was no need to pay the balance duty of Rs. 2 lakhs from PLA. The appellant could have easily debited the amount of Rs. 2 lakhs against the Cenvat available of Rs. 4,34,896/-. However, it was only due to clerical omission that the closing balance was not properly reflected and resulted in default. Subsequently the appellant have admittedly paid the difference in cash by Challan on 18.12.2006. Accordingly, it was prayed to drop the Show-Cause-Notice. The SCN was

adjudicated vide order in original dated 28.05.2008 and the proposed demand was confirmed with interest and further penalty of Rs. 8 lakhs was imposed under Rule 25(1)(a) C.E.R 2002 for contravention of the provisions of Rule 8(3A) of C.E.R 2002. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals), who was pleased to dismiss the appeal. Being aggrieved, the appellant is before this tribunal.

3. The learned Counsel have urged that the facts are squarely covered by the ruling of Hon'ble Allahabad High Court in the case of Commissioner Central Excise Vs. Anand Tissue Ltd., 2016-TIOL-2018-HC-ALL-CX, wherein by the judgment dated 30.08.2016, the decision of the Tribunal passed in similar facts was upheld. This Tribunal held that for the default period, the assessee paid duty from its Cenvat account instead of paying it from their current account / cash. That since both authorities below have admitted the duty has been paid by the assessee on clearance of each consignment by utilizing Cenvat credit, such payment is in conformity with Sub Rule 3A of Rule 8 and thus order for recovery of duty already paid is not proper and unjustified, placing reliance on the ruling of Hon'ble Gujarat High Court in the case of Indsur Global Ltd. and that imposition of penalty under Rule 25 of C.E.R is not justified as non payment of duty within due date was due to constraint in arrangement of funds, which can not be attributable to fraud, collusion and willful misstatement. The Hon'ble High Court further observed that since Rule 8(3A) of C.E.R. 2002 has been held violative of Article 14 of Constitution of India in the case of Indsur Global Ltd., by Hon'ble Gujarat High Court and Malladi Drugs and Pharmaceuticals Ltd. 2015-TIOL-1262-HC-MAD-CX and Sandley Industries 2015-TIOL-2490-HC-P&H-CX, the notices issued under Rule

8(3A) of C.E.R. 2002 were set aside. The Hon'ble High Court was pleased to dismiss the appeal of revenue.

4. In the facts of the present case I find that it is admitted fact that there is no case of deliberate default or any contumacious conduct on the part of the appellant. They had sufficient balance in Cenvat account which could not be used due to clerical mistake. I find that on the date of issuing Show-Cause-Notice, nothing was recoverable, as the appellant had admittedly deposited the duty with interest much before the date of Show Cause Notice. In this view of the matter, the Show Cause Notice is held to be untenable. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit, if any.

(Order Dictated in Open Court)

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

Pandey

प्रमाणित प्रति/Cerified True Copy
23/05/2017
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क, उत्पाद शुल्क एवं सेवा कर अपील अधिकरण/C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001