CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 2622 of 2012

(Arising out of Order-in-Appeal No. 282/2012 dated 09.07.2012 passed by Commissioner of Central Excise (Appeals), Mangalore).

The South India Paper Mills Ltd
Chikkayana Chatra,
Nanjunagud, **.......... Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Mysore
S1-S2, Vinaya Marga, Siddhartha Nagar,
Mysore
Karnataka - 570011. **....... Respondent**

Appearance:
Shri M. S. Nagaraja, Advocate for the Appellant
Shri Rajesh Shastry, Authorised Representative for the Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20259 /2025

Date of Hearing: 05.09.2024

Date of Decision: 04.03.2025

Per: P.A. Augustian

The issue in the present appeal is whether the Appellant had availed ineligible CENVAT credit, while transferring the capital goods which are cleared as such in the same financial year.

2. The brief facts are the Appellant had imported printing unit and filed Bill of Entry in the name of the Appellant on 07.02.2009. Thereafter Appellant cleared the entire imported set of machinery as

such in its original form on payment of Excise duty of Rs.8,15,399/- vide invoice No. KO-87685 dated 07.02.2009 to its own adjoining printing and packing divisions and the machines were used for manufacture and clearance of dutiable final products. Thereafter the Appellant had availed CENVAT credit of full amount on 26.03.2009. Alleging that the Appellant had availed ineligible CENVAT credit, proceedings were initiated and as per the impugned order, Adjudication authority confirmed the demand of CENVAT credit of full amount with interest and imposed penalty of Rs. 1,00,000/-. Aggrieved by said order, an appeal was filed before Commissioner (Appeals) and Commissioner (Appeals) also rejected the appeal. Aggrieved by said order, present appeal is filed before the Tribunal.

3. When the appeal came up for hearing, the Ld. Counsel for the Appellant draws our attention to the provisions of Section 4(2)(a) which is extracted below:

> *"Rule 4 (2) (a) - The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year:*
>
> ***Provided** that the CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on such capital goods in the same financial year if such capital goods are cleared as such in the same financial year:*
>
> ***Provided** further that the CENVAT credit of the additional duty leviable under sub-section (5) of Section 3 of the Customs Tariff Act, in respect of capital goods shall be allowed immediately on receipt of the capital goods in the factory of the manufacturer."*

4. The Ld. Counsel further submits that from the above said provision, it is clear that if the capital goods are removed as such in the

same financial year, CENVAT credit in respect of capital goods shall be allowed for the whole amount of the duty paid on capital goods. Thus, the Appellant complied with the first proviso of Rule 4(2)(a) of CENVAT Credit Rules, 2004 and is eligible for the CENVAT credit availed by them. The Ld. Counsel also draws our attention to the provisions of Rule 3(5) and (6) of the CENVAT Credit Rules, 2004.

5. The Ld. Counsel also submits that the lower authority completely ignored the applicability of the first provision under Rule 4(2)(a) of CENVAT Credit Rules, 2004, when the capital goods received and cleared as such in the same financial year. The Ld. Counsel also relied on the decisions in the matter of **M/s NeelKamal Ltd vs CCE, Bolpur** reported in **2014 (310) ELT 956 (Tri-Kol)** and **M/s Indo-Shell Mould Ltd CCE, Coimbatore – 2016 (343) ELT 944 (Tri –Che).** The Ld. Counsel also submits that the demand is also barred by limitation, since the Show Cause Notice was issued on 08.04.2010 and received by the Appellant on 11.04.2010, whereas the CENVAT Credit on the capital goods was availed on 24.06.2009.

6. The Ld. Authorised Representative (AR) reiterated the submission in the impugned order and submits that since they have removed the goods, the Adjudication authority rightly confirmed the demand and imposed penalty.

7. Heard both sides and perused the records.

8. We have gone through the relevant provision of law and the decisions relied by the Appellant. As per Rule 4(2)(a) of CENVAT Credit Rules, 2004, CENVAT credit in respect of capital goods is permitted of the whole amount of duty paid on such capital goods in the same financial year, if such capital goods are cleared as such in the same

financial year. Following the above, the Appellant is eligible for claiming the entire CENVAT credit as claimed by them. Hence the impugned order confirming demand and imposing penalty is unsustainable and is set aside.

9. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 04.03.2025)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

sasidhar