CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/997/2006-DB, E/998/2006-DB

[Arising out of Order-in-Appeal No. 361/2006-CE dated 22/06/2006; and Order-in-Appeal No. 377/2006-CE dated 22/06/2006 passed by the Commissioner of Customs and Central Excise (Appeals), Cochin.]

M/s. KOCHIN KAGAZ LTD.
THAIKATTUKARA, P.O, ALUVA, ERNAKULAM DIST, KERALA — Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax
COCHIN-CCE
C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA — Respondent(s)

Appearance:

Mr. Raghavendra B. Hanjer, Advocate
P. SREEDHARAN
NO-57/2538A, II FLOOR, KAKIKODE WARRIAM, WARRIAM ROAD,
COCHIN - 682016
KERALA — For the Appellant

Mrs. Kavitha Podwal, AR — For the Respondent

Date of Hearing: 22/05/2018
Date of Decision: 22/05/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20740 - 20741 / 2018

Per : P. ANJANI KUMAR

M/s. Cochin Kagaz Limited, the appellants, are engaged in the manufacture of kraft paper. The appellants had set up two units for manufacture of kraft paper. Both the units are known as Unit-1 and Unit-2. Both the units were availing concessional rate of duty at 8% up to an aggregate quantity of 3500 MTs in a financial year in terms of Notification No.6/2002-CE dated 1.3.2002. Both the units have separate registration with the Central Excise Department and availed the concession separately for the financial years 2005-06 to 2006-07.

2. The Department contended that both the units are not eligible to avail the concessional rate of duty separately and a show-cause notice No.19/2006 dated 4.4.2006 and No.60/2006 dated 15.12.2006 were issued to the appellant proposing clubbing the clearances of both units for the purpose of limiting the concessional rate of duty to a quantity of 3500 MTs of kraft paper during a year. The show-cause notice proposed recovery of duty short paid along with interest while also proposing for imposition of penalties. Show-cause notices were confirmed by the adjudicating authority and were upheld by the Order-in-Original No.361/2006 dated 22.6.2006 and Order-in-Appeal No.377/2006-CE dated 22.6.2006 passed by the Commissioner of

Customs and Central Excise (Appeals), Cochin. As the issue involved in both the appeals No. E/997/2006-DB and E/998/2006-DB is same, therefore, they are taken up together for disposal by this common order.

3. The appellants contended that Notification No.6/2002-CE exempts products of paper and paperboard or articles made therefrom from the stage of pulp, in a factory. The said exemption is subject to fulfillment of condition No.14. One of the condition of Sl. No.14 is that the exemption shall apply only to the paper and paperboard or articles made therefrom cleared for home consumption from a factory, in any financial year up to first clearances of an aggregate quantity not exceeding 3500 MT. The very expression 'factory' used in the exemption Notification clearly shows the intention of the Government that exemption was available to goods cleared from a factory and not from a manufacturer cleared from different factories. The intent of the Notification is also supported by Hon'ble Finance Minister's speech in the budget session of 1994-95. Both the units have separate labour force, separate electricity connection, etc. The fact that both the Units 1 and 2 are separate factories is established by various certificates given by statutory authorities like PF, ESI Department, license issued by the Factories and Boilers

Department. Central Excise department also have given them separate registrations. The appellant submitted that in their own case, the learned Commissioner (A) vide Order-in-Appeal No.02 and 03/2008 dated 15.1.2008 has allowed the benefit of Notification No.6/2002-CE for subsequent period. Further, the appellants contended that the demand in respect of appeal No.998/2006 is completely barred by limitation. The appellants have cited the following case laws in furtherance of their submissions:

- *CCE, Madurai vs. Rajalakshmi Paper Mills Ltd.: 2005 (179) ELT 161 (Tri.-Chennai)*
- *Approved in CCE, Madurai vs. Amaravathi SV Paper Mills Ltd.: 2010 (256) ELT 679 (SC)*
- *Rollatainers Ltd. vs. CCE, Delhi-III: 2004 (170) ELT 257 (SC)*
- *CCE, Pune-II vs. Bunsi Pulp Paper Mills Ltd.: 2014 (306) ELT 650 (Tri.-Mum.)*

4. The learned AR submitted that though Unit 1 and 2 of the appellants have been issued with separate Central Excise registration, both are nothing but two divisions of the same factory as they are operating from common premises and are under the same management and maintaining common balance sheet and having common bank account, therefore, Units 1 and 2

of the appellant are not separately eligible for the benefit of Notification No.6/2002-CE dated 1.3.2002.

5. We have gone into the facts of the case and the submissions of the appellants and the learned AR. We find that this case is squarely covered by the decisions of Hon'ble Supreme Court in the following cases:

(i) Rollatainers Ltd. vs. CCE: 2004 (170) ELT 257 (SC)

(ii) Amaravathi S. V. Paper Mills Ltd.: 2010 (256) ELT 679 (SC)

It was held in the case of ***Rollatainers Ltd. vs. CCE, Delhi*** (supra) that simply because both the factories are in the same premise that does not lead to an inference that both the factories are one and the same. In the present case, from the facts, it is apparent that though the factories are situated in the same premise and managed by the same authority, they have separate labour force, electricity connection, license of the boilers department, license of the factories department and Central Excise department also. Therefore, going by the ratio of the judgments of the Hon'ble Supreme Court in the above cases, we find that Exemption Notification No.6/2002-CE dated 1.3.2002 cannot be denied to Units 1 and 2 of the appellant as it is established that they are distinct and separate factories.

5.1 We find that the intention of the Notification was to extend benefit to the paper and paperboard manufactured in a factory and not to the manufacturer as a whole. Going by the facts of the case, we find that both Units 1 and 2 managed by the appellants are different factories so as to make them eligible separately for the exemption contained in the Notification No.6/2002. We also find that this case is squarely covered by Hon'ble Supreme Court's decisions in the cases of ***Rollatainers Ltd.*** and ***Amaravathi S. V. Paper Mills Ltd.*** cited supra. Therefore, the appeals are allowed with consequential relief. if any.

(Operative portion of the Order was pronounced
in Open Court on **22/05/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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