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

Appeal(s) Involved:

E/764/2008-DB

[Arising out of OIA No. 40/2008 dated 23/07/2008 passed by CCE(Appeals), Mangalore]

GEMINI GRAAPHICS PVT LTD
SY.NO.64/1, 106-107, KAMATHANA VILLAGE
TALUK & DIST, BIDAR

Appellant(s)

Versus

C.C.,C.E.& S.T-BELGAUM
NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM,
KARNATAKA
590001

Respondent(s)

Appearance:

Shri M.S. NAGARAJA, Advocate
T. RAJESWARA SASTRY & ASSOCIATAES.
NO.1010, 2ND FLOOR,
ABOVE CORP.BANK, 26TH MAIN, 4TH T BLOCK, JAYANAGAR
BANGALORE
KARNATAKA
560 041

For the Appellant

Shri N. Jagadish, Superintendent(AR) — For the Respondent

Date of Hearing: 03/07/2018
Date of Decision:___________

CORAM:

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

Final Order No. __________ / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 23/07/2008 passed by the Commissioner(Appeals) whereby the

Commissioner(Appeals) has upheld the Order-in-Original and rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants, manufacturers of paper and paper board, availed exemption under Notification No.6/02 dt. 01/03/2002 according to which paper & paper board manufactured, starting from the stage of pulp, in a factory and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds or rags is eligible for concessional rate of duty of 8% as per Sl.No.86 thereof. After verification of documents and discrete investigation, a show-cause notice dt. 03/04/2006 was issued demanding duty of Rs.32,16,906/- for the period August 2003 to September 2005. Another show-cause notice dt. 23/01/2006 was also issued demanding duty of Rs.23,57,493/- for the period October 2005 to July 2006. The adjudicating authority vide Order-in-Original confirmed the duty amount of Rs.3,65,801/- for the year 2003-04 along with interest and also imposed equivalent penalty and dropped the demand pertaining to the period 2004-05 and 2005-06. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals). The Commissioner(Appeals) vide the impugned order has held that the appellant has not contested the demand for the period 2003-04 and had paid the same voluntarily and therefore the appeal against the demand for the period 2003-04 cannot be considered and rejected the appeal. Hence the present appeal.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the facts on record and also contrary to the binding judicial precedent. He further submitted that the show-cause notice was issued proposing to deny exemption under Notification No.6/2002-CE dt. 01/03/2002 for the period from August 2003 to September 2005 on the ground that the assessee had used soft wood pulp, JK pulp, unbleached pulp, JK wet pulp in excess of 25 of the total pulp consumed. The adjudicating authority relied upon the verification reports dt. 13/02/2007 and 23/03/2007 submitted by the jurisdictional ACCE and passed the Order-in-Original No.3/2007-ADC dt. 17/04/2007 dropping the demand for the period 2004-05 and 2005-06 and confirmed only the demand of Rs.3,65,801/- along with interest and penalty. He further submitted that the Commissioner(Appeals) in the impugned order has wrongly observed that the assessee has not contested the demand for 2003-04 and could not produce any evidence, orally or documentary, before him. He further submitted that the ground of appeal filed before the Commissioner(Appeals) and the written submissions filed before him which is on record, show that the appellant had contested the basis of the demand on merit and limitation based on the document already available on record. He further submitted that the adjudicating authority in para 23 of the order has clearly recorded that JK pulp, unbleached pulp, JK wet pulp etc. are not shown to be not unconventional and hence the same have to be treated as unconventional material. In view of this finding, the learned counsel submitted that the very basis of the show-cause notice and the consequent demand is vitiated. Further he submitted that perusal of the adjudication order would show that the appellant had maintained raw material register showing the details of issue of raw material during the specific period for manufacture of specific type of paper. Further the adjudicating authority has recorded in para 24.4 that while the raw material register contains distinct evidence of issue of raw material during the period and final product whereas in the show-cause notice, the allegation of the Department is that the assessee had not maintained records for consumption of waste paper and pulp. The learned counsel further submitted that the disallowance of concessional rate of duty for the year 2003-04 is without any legal or material basis and contrary to the law. In support of his submission, he relied upon the following decisions:-

i. CCE Vs. ITC, Bhadrachalam Paper Boards [2003(160) ELT 1092 (T)]
ii. CCE, Raipur Vs. Orient Paper Mills [2000(124) ELT 469 (Tri. LB)]
iii. Rolex Paper Mills Ltd. Vs. CCE, Guntur [2004(173) ELT 436 (Tri.)]
iv. CCE&C, Trivandrum Vs. Punalur Paper Mills [2016(337) ELT 134 (Tri.)]

4.2. Learned counsel further submitted that the demand for the year 2003-04 is barred by limitation as the appellant has not suppressed any facts from the department. He further submitted that the appellants have been submitting monthly RT12 / ER1 returns showing the quantity of paper cleared under concessional rate of duty under Notification No.6/2002-CE. He further submitted that appellants have correctly availed the benefit of concessional rate of duty for 2004-05 and 2005-06 as evident from the detailed verification report submitted by the ACCE during the process of adjudication much after the issuance of the show-cause notice. Learned counsel further submitted that the very basis of the allegation of not maintaining the proper record was incorrect and there was no suppression of facts and that is why the adjudicating authority also dropped proceedings for 2004-05 and 2005-06. Further the adjudicating authority has not recorded any findings of misstatement, suppression of facts or contravention of the Central Excise Act, 1944 or notification issued there under with intention to evade payment of duty. He further submitted that the appellant raised the issue on time bar before the Commissioner(Appeals) but he did not give any findings in this regard. In support of this submission, he relied upon the following decisions:-

i. Tamil Nadu Housing Board Vs. CCE, Madras [1994(74) ELT 9 (SC)]
ii. CCE, Mangalore Vs. Pals Microsystems Ltd. [2011(270) ELT 305 (SC)]
iii. CCE, Kolhapur Vs. D.B. Technologies P. Ltd. [2013(294) ELT 280 (Tri. Mum.)]
iv. Larsen & Toubro Ltd. Vs. CCE, Pune [2007(211) ELT 513 (SC)]
v. Anand Nishikawa Co Ltd. Vs. CCE, Meerut [2005(188) ELT 149 (SC)]

5. On the other hand, the learned AR defended the impugned

order and submitted that extended period has rightly been invoked as the appellant has suppressed the facts from the Department and has not maintained proper records.

6.1. After considering the submissions of both sides and perusal of material on record, we find that the show-cause notice proposing to deny the exemption under Notification No.6/2002 was issued for the period August 2003-September 2005. But the adjudicating authority, after proper verification of the reports submitted by the jurisdictional ACCE, has dropped the demand for the year 2004-05 and 2005-06 on the ground that the appellants had maintained proper records showing the details of the issue of raw material during the specific period for manufacture of specific type of paper. Further we find that the Commissioner(Appeals) has only confirmed the demand for the year 2003-04 on the ground that the said demand was not contested by the assessee whereas the assessee from the very beginning has contested the demand on merits as well as on limitation and for the year 2004-05 and 2005-06, the original authority has dropped the demands after proper verification. Further we find that in the case of Rolex Paper Mills Ltd. cited supra, the Tribunal has observed in para 4 as under:-

> ***4.*** *On a careful consideration and perusal of the records, we find that the appellants have used waste paper for the purpose of manufacture of paper and paperboards. The Board, by their Circular cited supra, has clarified that waste paper is required to be treated as unconventional*

> *raw material which is exempted in terms of the Notification in question. The Tribunal also, in the case of CCE, Raipur v. Orient Paper Mills, has treated waste paper as one of the other raw materials i.e. other than bamboo, hard wood, soft wood, reeds and rags for the Notification No. 136/86-C.E. and has upheld the prayer for grant of the benefit of exemption. We find a similar view have been expressed in the case of CCE v. ITC Bhadrachalam Paper Boards; CCE v. Associated Pulps & Paper Mills and in the case of M/s. Sri Vinayaka Paper Boards Pvt. Ltd. We are satisfied on perusal of the judgments that the issue is covered in their favour and hence by respectfully following the ratio of the cited judgments and the Board's Circular, the impugned order is set aside and the appeal is allowed with consequential relief.*

6.2. Further we find that the entire demand is barred by limitation as there is no allegation of suppression against the appellant as he has maintained the proper records and has also been submitting the monthly RT12 / ER1 returns showing the quantity of paper cleared under concessional rate of duty under Notification No.6/2002-CE. We also find that the adjudicating authority has recorded no findings of wilful misstatement, suppression of facts or contravention of Central Excise Act , 1944 or notification issued thereunder with intent to evade payment of duty. In the absence of specific finding of deliberate suppression of facts with intent to evade payment of duty, the demand confirmed for the year 2003-04 is barred by limitation as held in various case laws relied upon by the appellant cited supra.

7. Therefore, keeping in view the facts and circumstances and the

ratio of the decisions cited supra, we are of the considered opinion that the impugned order is not sustainable in law on merits as well as on limitation. Consequently, we set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced and dictated
in Open Court on **.......................**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...