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

Appeal Nos.E/232/2011 & E/233/2011

[Arising out of Order-in-Appeal No.47 & 48/2011 dt. 31.01.2011 passed by Commissioner of Central Excise (Appeals), Madurai]

Commissioner of Central Excise, Madurai — Appellant

Versus

Goodwill Team Papers Ltd. — Respondent

Appearance :

Shri R. Subramaniyan, AC (AR)
For the Appellant

Shri J. Shankarraman, Advocate
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 12.04.2018

FINAL ORDER No. 41106-41107 / 2018

Per Bench

The facts of the case are that M/s.Goodwil Team Papers Ltd., the respondents herein, are manufacturers of craft paper and laminated kraft paper. The respondents cleared laminated kraft paper on payment of concessional rate of Excise Duty available under

Notification No.4/2006-CE. Department took the view that as per the notification, paper and paper board and articles made therefrom should have been manufactured in the same factory, however that is not so in the instant case. Hence two show cause notices were issued to the appellants proposing demands of differential duty with interest for the period April 2008 to February 2009 and for the period March 2009 to October 2009. The show cause notices also proposed imposition of penalty under Rule 25 of the Central Excise Rules,2002. In adjudication, the differential duty of Rs.36,76,928/- for the period April 2008 to February 2009 and Rs.26,25,780/- for the period March 2009 to October 2009 along with interest were confirmed and penalties were imposed. On Appeal, the Commissioner (Appeals) vide a common Order-in-Appeal dt. 31.1.2011 (impugned order) set aside the adjudication orders and allowed the appeals of the respondents. Aggrieved, the department is before this forum

2. Today when the matter came up for hearing, Ld. A.R Shri R.Subramaniyan reiterated the grounds of appeal. He submits that the notification prescribes the condition of process of manufacture of goods within the same factory whereas in the present case, the assessee had cleared kraft paper manufactured by them to

a job worker for lamination process, hence violating conditions of the notification.

3. On the other hand, on behalf of the respondent, Ld. Advocate Shri J. Shankarraman submits that the concession benefit in terms of Notification No.4/2006-CE is for paper and paper board or articles made therefrom. The entire process of manufacture of kraft paper is done within their factory on which aspect there is no dispute. As such, they are very much eligible for the benefit of notification. Only for the lamination process of the kraft paper already manufactured, they sent the goods to the job worker. Hence the conditions relating to the entire process required to be done within the factory upto the stage of manufacture of paper or paper board has been complied with. There is no condition precedent in the notification that after the manufacture of such paper, they cannot send out for lamination process.

4. Heard both sides. We find that the very issue has been addressed by the Tribunal in the case of *ABC Paper Vs CCE Jallandhar* – 2015 (319) ELT 506 (Tri. – Del.). In that particular case, the conversion of the pulp into paper rolls was done by the appellant therein on job work basis and therefore benefit of Notification No.4/2006-CE was denied to the appellant. However, the Tribunal

has held that as the manufacturer undertaking to discharge duty liability on finished products and job work sending back paper rolls to manufacturer under job work challan without payment of duty, benefit of said exemption notification is not deniable to the manufacturer. The relevant portion of the order is reproduced as under :

> **"5.** We have considered the submissions from both the sides and perused the records. Notification Nos. 6/2002-C.E., dated 1-3-2002 (Serial No. 86 and 86A) and successor Notification No. 4/2006-C.E. (Serial Nos. 90-91) prescribe the concessional rate of duty for paper and paper board or articles made therefrom manufactured, starting from the stage of pulp in factory, and the pulp is of a specified specification, that is, containing not less than 75% by weight of the pulp made from the materials other than Bamboo, hard wood, soft wood, reed (other than sarkanda) or rags. This exemption is subject to certain conditions as mentioned in the notification, and one of the condition is that this exemption would be available to papers/paper board cleared for home consumption from factory in any financial year up to first clearances of aggregate quantity not existing 3500 MT and that this exemption shall not be applicable to a manufacturer of the said goods who avails of exemption under Notification No. 8/2003-C.E., dated 1-3-2003. There is no dispute that the paper has been manufactured from the pulp of the specified specifications and the other two conditions of the notification, as mentioned above, are also satisfied. The appellant manufacture the pulp of the required specification in their own factory and some quantity of such pulp is also procured from outside. However, conversion of pulp into paper, has been outsourced to M/s. Anmol Papers, who convert the pulp into paper on job work basis and return the paper rolls without payment of duty under job work challans under Notification No. 214/86-C.E. There is no dispute that for this purpose, the appellant have given the required declaration, that the paper rolls received from M/s. Anmol Papers would be used by them for manufacture of the finished products which would be cleared on payment of duty. The appellant subjected to the paper rolls, received from the job worker, to the process of cutting and trimming and cleared the finished paper sheets on payment of duty by availing the exemption under Notification No. 6/2002-C.E. and 4/2006-C.E. The point of dispute is as to whether the appellant would be eligible for these exemptions. The Department seeks to deny the exemption on the ground that for availing of these exemptions, the conversion of pulp into paper must be done in the same factory from which the paper is cleared, and that since, in this case the conversion of pulp into paper rolls has been outsourced and has done in the factory of M/s. Anmol Papers, the exemption would not be available. In our view when in this case it is the appellant who is liable to pay duty on the paper and not the job worker who converted the pulp into paper rolls on job work basis, the exemption under these notifications cannot be denied to them. In view of this, we hold that the

impugned order is not correct. The same is set aside. The appeals are allowed. The stay application in respect of Appeal No. E/66/2011 also stands disposed of."

5. Following the ratio of the *ABC Paper* decision (supra), we hold in favour of the respondent. We do not find any infirmity in the impugned order for which reason, department appeals are dismissed.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S)**
Member (Technical)	**Member (Judicial)**

gs