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

**E/502 – 503/2012 & E/40022,40023/2013**

(Arising out of Order-in-Original No. 8 & 9/COMMR/CE/2012 dated 06.09.2012 passed by the Commissioner of Central Excise Tirunelveli).

M/s. Sripathi Paper & Boards Appellants/Respondent

Vs.

CCE & ST, Tirunelveli Respondent/Appellant

Appearance

Shri M. Saravanan, C.A.,
for the Appellant/Respondent

ShriArjunRaghavendra M., DC (AR)
for the Respondent/Appellant

**CORAM:**

**Hon'bleShri V. Padmanabhan, Member (Technical)**
**Hon'bleShriP. Dinesha, Member (Judicial)**

Date of Hearing/Decision: **30.05.2018**

FINAL ORDER No**.** **41906-41909/2018**

Per: P. Dinesha

**I. E/502 – 503/2012**

These are assessees appeals filed against the orders of the Commissioner dated 06.09.2012. The appellants are engaged in the manufacture of 'Kraft Paper' falling under sub-heading 48041100.

2.1 The brief facts of the case leading to the present appeals as could be gathered from the contentions in SCN, are that:-

i) the assessees had failed to avail the mandatory exemption for the first clearances of an aggregate quantity of 3500 MTs of Kraft paper for the financial year 2010-11 in terms of Sl.No. 90 of Notification No. 4/2006-CE but have paid duty for the clearances of finished goods during the period from 01.04.2010 to 27.05.2010 in terms of Sl.No. 91 of the said Notification, in contravention of provisions of Section 5A (1A) of the Act.

ii) the assessee is not eligible for Cenvat credit on the inputs lying in stock, on the inputs in process and on the inputs contained in the final product lying in stock as on 01.04.2010 as per Rule 11 (3) of CCR.

iii) The assessee is not entitled to take credit of the Cenvat credit balance that was available on 31.03.2010 as per Rule 11 (3) of CCR.

iv) The assessee is not entitled to Cenvat credit on such quantity of inputs and input services which were used in the manufacture of exempted gods during the material period as per Rule 6 of CCR.

v) The amount of Rs.30,52,684/- paid by the assessee towards duty during the material period, is not liable to be considered as duty of Excise in as much as it was paid during the exemption period and the duty so paid, rendered as non-duty, is liable to be demanded and appropriated to the Central Govt. under Section 11 D (1A) of the Act; and therefore, the Revenue issued two SCNs dated 6.5.2011.

2.2 After considering the appellant’s reply and based on the arguments advanced during the personal hearing, the adjudicating authority/Commissioner vide impugned order confirmed the propositions contained in the SCNs except dropping penalty under Rules 25 & 26 of the CER, 2002. Aggrieved by the same, the assessee is before this forum.

3. Heard the Ld. Consultant, Shri M. Saravanan appearing for the appellant-assessee and the Ld. AR, Shri M. Arjun Raghavendra, DC, for the Revenue and perused the materials placed on record along with various case laws relied upon by both the parties.

4.1 It is the contention of the Ld. Consultant that exemption referred to by the Revenue ie., Sl.No. 90 of the Notification No. 4/2006-CE dated 01.03.2006 as amended is subject to satisfaction of condition No.10 and therefore, is not an absolute Exemption Notification rather a conditional Exemption Notification. For this reason alone, the provisions of Section 5A (1A) are not applicable to the assessee's case. Moreover, according to him, the very same notification, at Sl.No. 91 and 93 grants a concessional rate of 4% duty on final products which had been availed by the appellants. The case of the appellant is being not covered by Sl.No. 90 of the notification supra since it was only a conditional exemption notification because, according to him, when all the three conditions at No.10 are satisfied, only then, the exemption can be claimed by the manufacturer but with the caveat that the exemption is subject to the first clearance of 3500 MTs.

4.2 During the course of the hearing, the Ld. Consultant placed reliance on the judgments/orders of various Benches of CESTAT including that of this Bench at Chennai, which are as under:-

1. *M/s. KovaiMaruthi Paper & Boards &Ors. Vs. CCE, Salem*
   Final Order Nos. 41301 – 41309/2018 dt. 11.04.2018

2. *Balakrishna Paper Mills Ltd. &Ors. Vs. CCE,*
   2015-TIOL-1100-CESTAT-MUM

3. *Murli Industries Ltd. Vs. CCE, Nagpur*
   2015-TIOL-1789-CESTAT-MUM

4. *Padmavati Pulp & Paper Mills Vs. CCE*
   2015-TIOL-2434-CESTAT-MUM

5. Per contra, the Ld. AR, Shri M. Arjun Raghavendra, DC, appearing for the Revenue supported the findings of the lower appellate authorities.

6. A bare reading of Sl.No. 90 of the Notification supra, we find that the same is controlled by the condition No. 10. While the rate of duty on the goods described at Sl.No. 90 are 'nil' ie., exempted, the goods at Sl.No. 91 are taxed at 4%; Sl.No. 90 is controlled by condition No. 10 whereas Sl.No. 91 is controlled by condition No. 11. The first condition is that the exemption is available for the clearance of first 3500 MTs and the second condition is that the exemption is not applicable to a manufacturer who avails exemption under Notification No. 8/2003-CE dated 01.03.2003. The 'nil' rate of tax is therefore available subject to the satisfaction of both the above conditions.
An identical issue came to be decided by this Bench in a batch matter in the case of M/s. Kovai Maruthi Paper and Boards &Ors.

Vs. CCE, Salem (supra) involving the following issue extracted for the sake of convenience:-

> "9. The common issue that arises for consideration in all these appeals is whether the assessees are eligible to avail exemption as per the Notification No. 4/2006 under Sl. No. 91 and clear the goods on concessional payment of duty or whether it is mandatory to avail 'nil' rate of duty as provided under Sl. No. 90."

This Bench relying on the decision of Balakrishna Paper Mills & Others (supra) had thus concluded that the demand raised by the Revenue could not be sustained. On a reading of the above order of this Bench we find that the issue is no more res integra and therefore, we follow the same ratio decidendi to hold that the demand raised by the Ld. Commissioner is wrong and set aside the findings of the Ld. Commissioner wherein the Cenvat credit was disallowed. Appeals of the assessee are allowed with consequential reliefs, if any.

**II. <u>E/40022 – 40023/2013</u>**

7. The department is aggrieved by the orders of the Commissioner to the extent that there was no findings with regard to the proposition made in the SCN to the demand of Cenvat credit of the balance amount of Rs. 28,,27,645/- and Rs.17,81,500/- Which was lapsed on 31.03.2010. The other grievance of the Revenue is that there is no finding given by the Commissioner for invoking Section 11 AC of the CEA.

8.1 From the perusal of the impugned order of the Commissioner, the Ld. Commissioner has clearly observed that the assesse has to necessarily pay an amount equivalent to the credit availed on inputs, inputs in the process of manufacture and inputs in the final products lying in stock either by deducting the amount from the balance available in their books of accounts and, if there is no sufficient balance, then, by way of cash payment. With regard to the balance credit available in the appellant's books after such reversing as on 31.03.2010, if any, is lapsed. The above finding is clearly on the demand of Cenvat credit on the balance of Rs. 28,27,645/- andRs.17,81,500/-as on 31.03.2010 and therefore, we do not see any valid reason in this ground of the departmental appeal. Therefore, the same is dismissed.

8.2 With regard to the other ground, the Ld. Commissioner in his wisdom has imposed a penalty of Rs. 54,90,960/- and Rs.17,81,500/-under Rule 15 of CCR read with Section 11 AC of the CEA. We have allowed the assesses appeals by setting aside the demand with consequential reliefs and therefore, the very levy of penalty is set aside and therefore we do not see any merit in the second ground raised by the Revenue.

9. In the result, both the appeals filed by the department are dismissed and both the appeals filed by the assessees are allowed.

(Order pronounced in the open Court)

(P. DINESHA) (V. PADMANABHAN)
MEMBER (JUDICIAL) MEMBER (TECHNICAL)

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