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

Appeal No.: E/00528/2012 & E/40081/2013

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Sl. No.	Appeal No.	Appellant	Respondent
1.	E/00528/2012	M/s. Akshera Papers	The Commissioner of Central Excise, Salem
2.	E/40081/2013	The Commissioner of Central Excise, Salem	M/s. Akshera Papers
(Arising out of Order-in-Original No. 09/2012 both dated 27.09.2012 passed by The Commissioner of Central Excise, No. 1 Foulks Compound, Anaimedu, Salem)			

Appearance:-
Shri. M. Karthikeyan, Advocate
for the Appellant
Shri. S. Govindarajan, AC (AR)
for the Respondent

CORAM:
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**06.08.2018**

Final Order No. 42293-42294 / 2018

Per Bench :

These are the assessee's appeals filed against the Order-in-Original of Commissioner of Customs and Central Excise, Salem dated 27.09.2012 wherein the Commissioner has demanded irregular credit taken and utilized on inputs and input services in the manufacture of first clearance of craft paper. The appeal was taken up for hearing today i.e., on 06.08.2018.

2. Shri. M. Karthikeyan, Ld. Advocate appeared for the appellant and Shri. S. Govindarajan, Ld. Department Representative (DR) appeared for the Revenue.

3.1 During the course of hearing, Ld. Advocate appearing for the assessee pleaded that the issue involved in these cases is no more *res integra* since this very Bench has considered this issue in ***Appeal Nos. E/502-503/2012 & E/40022-40023/2013*** in the case of ***M/s. Sripathi Paper and Boards Vs. C.C.E. & S.T., Tirunelveli.***

3.2 He further pointed out that in the above case, this Bench of the Tribunal after considering the rival contentions has, in ***Final Order No. 41906-41909/2018 dt. 30.05.2018***, ruled as under :

> *"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.*
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> *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:-*
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>> *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."

4. We find that the very issue has been considered in the above case and therefore, going by the *stare decisis* allow the appeal with consequential reliefs, if any.

(Operative part of the order was pronounced in open Court)

(P Dinesha)	**(Madhu Mohan Damodhar)**
Member (Judicial)	Member (Technical)

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