

**IN THE CUSTOMS, EXCISE AND SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI  
[COURT : Division Bench B1]**

**Appeal No.: E/40034 & 40071/2013**

Sl. No.	Appeal No.	Appellant	Respondent
1.	E/40034/2013	The Commissioner of G.S.T. & Central Excise, Salem	M/s. MSP Paper Mill Pvt. Ltd., Tiruchengode
2.	E/40071/2013	M/s. MSP Paper Mill Pvt. Ltd., Tiruchengode	The Commissioner of G.S.T. & Central Excise, Salem
<b>[Arising out of Order-in-Original No. 08/2012-(C.Ex.) dated 27.09.2012 passed by the Commissioner of Central Excise, Salem]</b>			

**Appearance:-**

Ms. T. Usha Devi, DC (AR)

for the Appellant

Ms. P. Jayalakshmi, Advocate

for the Respondent

[& vice versa]

**CORAM:**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**

**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing: 10.12.2018

**Date of Pronouncement: 12.12.2018**

Final Order No. **43107-43108 / 2018**

**Per P. Dinesha :**

Both these appeals arise out of the Order-in-Original No. 08/2012-(C. Ex.) dated 27.09.2012 passed by the Commissioner of Central Excise, Salem. The period of dispute is from 01.04.2010 to 19.07.2010.

2.1 The assessee is engaged in the manufacture of Kraft paper under Central Excise Tariff Heading 4804 11 00 of the Central Excise

Tariff Act, 1985. The appellant also availed CENVAT Credit on inputs and input services and were utilizing the same for payment of excise duty on clearance of Kraft paper. It appeared that the assessee was exempt from payment of duty up to the first clearances of 3500 MT of Kraft paper in any financial year in terms of Notification No. 04/2006-CE dated 01.03.2006, but however, they opted to pay duty on the first clearances of 3500 MT for the disputed period without availing the exemption. It is the case of the Revenue that Sl. No. 90 of Notification 04/2006-CE being absolute in nature, the assessee ought to have availed the same and had no option to pay duty as per Sl. No. 91 of the above Notification; that the CENVAT Credit utilized on inputs and capital goods during the impugned period was liable to be recovered.

2.2 Accordingly, a Show Cause Notice dated 03.05.2011 was issued proposing the amount of Rs. 31,15,912/- to be credited to the Consumer Welfare Fund under Section 11D(5) of the Central Excise Act, 1944 being the amount collected from the assessee's buyers representing duty and recovery of wrongly availed Credit to the tune of Rs. 51,35,255/- under Rule 14 of the CENVAT Credit Rules, 2004 along with applicable interest and penalty. After due process of law, the Order-in-Original No. 08/2012 (C.Ex.) came to be passed

confirming the above proposals, against which the present appeals have been filed by both the Department and assessee before this forum.

3. Today when the matter came up for hearing, Ld. DC (AR) Ms. T. Usha Devi appeared on behalf of the Revenue while Ld. Advocate Ms. P. Jayalakshmi appeared on behalf of the assessee.

4. We have heard the rival contentions, perused the documents placed on record and have also gone through the judgements referred to during the course of arguments.

5. The issue involved is as to whether the disallowance of CENVAT Credit to the tune of Rs. 51,35,255/- and consequent demand of penalty under Rule 15(2) is justifiable. We find that this Bench had occasion to decide a similar issue, in the case of *M/s. Sripathi Paper & Boards Vs. C.C.E. & S.T., Tirunelveli in Final Order Nos. 41906-41909/2018 dated 30.05.2018*, the relevant portion of which is reproduced below :

*“ 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 assesseees 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. “*

6.1 We also take note of the subsequent Circular No. 937/27/2010-CX dated 26.11.2010 relied upon by the Ld. AR for the Revenue to flag the consequences of ambiguity in the exemption Notification. The exemption Notifications involved in the said Circular (*supra*) are Notification No. 29/2004-CE dated 09.07.2004 as amended by Notification No. 58/2008-CE dated 07.12.2008 and another Notification No. 59/2008-CE dated 07.12.2008.

6.2 We are not impressed, for the simple reason that the absolute exemption Notification referred to *supra* emanates is mandatorily required to be availed by the assessee, whereas, the exemption Notification No. 04/2006 in the case on hand, provides two options with different duty liabilities and different conditionalities. The said Notification thus is an optional one in the hands of the assessee and is not an absolute exemption Notification. Hence, we see no such

ambiguity with regard to exemption or otherwise, in the case on hand.

7. The similar issue having been decided by this Bench in the case of *M/s. Sripathi Paper & Boards (supra)*, we see no reason to deviate from the same. Following the above ratio, therefore, we allow the assessee's appeal with consequential benefits, if any, as per law and dismiss the Department appeal. Ordered accordingly.

*(Pronounced in open court on 12.12.2018)*

**(P Dinesha)**  
Member (Judicial)

**(Madhu Mohan Damodhar)**  
Member (Technical)

Sdd