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

E/176 & 178/2012

(Arising out of Order-in-Original No. 13/2011(Commissioner) dated 25.11.2011 passed by the Commissioner of Central Excise, Salem)

M/s. Kovai Maruthi Paper and Boards (P) Ltd. Appellant

Vs.

Commissioner of Central Excise, Salem Respondent

Appearance

Shri S. Raghu, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) 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: **05.10.2017**

Final Order Nos. 42354-42355/2017

Per Bench

The appellants were engaged in the manufacture of kraft paper (plain uncoated) and were availing concessional rate of duty @ 8% adv. under Sl. No. 86 of Notification No. 6/2002-CE dated 1.3.2002 as amended r/w Condition No. 14 thereof for the period upto October 2005 and subsequently @ 8% adv. under Sl. No.90 of Notification No. 4/2006-CE dated 1.3.2006 as amended r/w Condition No. 10 for the period April 2006 to

August 2007. As per the aforesaid notifications, following conditions are to be satisfied in order to avail the benefit:-

(i) Manufacture of paper and paper boards or articles made there from should start from the stage of pulp in a factory

(ii) Such pulp should contain not less than 75% of weight of pulp made from materials other than bamboo, hardwood, softwoods, reeds (other than sarkands or rags).

2. Shows cause notices were issued alleging that appellant is not eligible for availing the benefit of Notification as they have not fulfilled condition (i) as stated above. The appellants were making paper and paper board from waste paper which is their principal raw material and the manufacture of paper did not start from the stage of pulp as required for availing the benefit of the above Notifications. After adjudication, the original authority confirmed the demand raised along with interest and also imposed equal penalties. Hence these appeals.

3. On behalf of the appellant, ld. counsel Shri R.Raghu opened his argument by adverting to the show cause notice as well as to the impugned Order-in-Original. He submitted that in para 4 of the show cause notice, the ground raised for demanding duty and disallowing the benefit of notification is that the appellant has not fulfilled the first requirement / condition that the manufacture should start from the stage of pulp in a factory. this point was held in favour of the

appellant in para 12 and 13 of the impugned order. However, the Commissioner proceeded to confirm the demand stating that the appellant has not proved that the pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard wood, soft wood etc. Thus, the demand has been confirmed for non-fulfillment of the second condition in the notification. That there was no such allegation raised in the show cause notice and the appellant had not been given an opportunity to defend or establish its case on this aspect. Without raising an allegation in the show cause notice, the Commissioner has travelled beyond the show cause notice to confirm the demand observing that the appellant has not put forward sufficient evidence to prove that the pulp contains not less than75% by weight of pulp made from other than bamboo, hard wood, soft wood etc. On this ground alone, the demand will not sustain.

4. Against this, the ld. AR Shri A. Cletus reiterated the findings in the impugned order.

5. Heard both sides and perused the records.

6. The ld. counsel for appellant has pointed out that the relevant portion in the show cause notice which puts forward the basis of the demand raised in the show cause notice. The relevant portion is extracted asunder:-

> *"4. A careful reading of the above entries in the relevant Notifications along with the condition Nos. 14 and 10 respectively indicates that the concessional rate of duty of upto first clearances of an aggregate quantity not exceeding 3500 Metric Tones in a financial year is available to the*

assessees, only if they manufacture their finished goods viz. paper and paper board or articles made therefrom starting from the stage of pulp. As there was a doubt as to whether KMPB are actually manufacturing their finished goods starting from the stage of pulp i.e. directly from pulp, they were addressed by the jurisdictional Superintendent of Central Excise (Namakkal) vide his letter O.C. No. 310/2009 dated 25.6.2009 requiring them to furnish the manufacturing process of plain kraft paper. KMPB vide their letter No. KMP Unit I/CE/05/09 dated 25.6.2009 submitted the manufacturing process of plain kraft paper."

7. From the above, it is seen that the sole allegation raised in the show cause notice is that the appellant has not fulfilled the first requirement / condition in the notification which is that the paper manufactured should start from the stage of pulp in the factory. In the impugned order, the said issue has been held in favour of the appellant in para 12 and 13. In para 12, the Commissioner has observed that there were doubts raised for interpretation of the expression "starting from the stage of pulp" and the Board vide Circular No. 40/40/94-TRU dated 6.6.1994 had clarified as under:-

"3. The matter has been examined. In the notification Nos. 22/94C.E& 24/94C.E, the words "starting from the stage of pulp' only indicate that the processes involved in converting pulp to paper and paperboard or articles have to take place in the same factory from which these goods are cleared. The primary aspect is that the same factory must process the specified pulp; to culminate in the manufacturers of paper and paperboard of articles made therefrom. Manufacturers claiming these exemptions have to establish that the goods have been manufactured in the factory itself from pulp of the specified composition. These notifications are not intended to apply only those units which start from the raw materials to make pulp containing the specified percentage o unconventional ram materials. However, independent converters of paper and paperboard, etc. who do not process pulp are not covered under the purview of these notifications at all.

4. Accordingly, it is clarified that under notification Nos. 22/94-C.E,23/94 and 24/94, the concession would be

Customs, Excise & Service Tax Appellate Tribunal *available to paper, paper board, etc., if manufactured pulp of the required specification regardless of whether the pulp itself is manufactured in the same factory or not."*

8. Thus, the Commissioner observed that the controversy has been put to an end by the Board by clarifying that if pulp is manufactured of the required specification whether or not pulp itself is manufactured in the same factory, the benefit of the notification would be available to the manufacturer. However, in para 14, it is observed by the Commissioner that the concessional rate of duty of 8% / nil during the years 2004 – 05 to 2007 – 08 cannot be extended to the appellant in the absence of proof of that pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard wood, soft wood etc. Thus, the Commissioner has proceeded to confirm the demand on the ground which is absent in the show cause notice. It is indeed correct that the Commissioner has travelled beyond the show cause notice. In such circumstance, we find that the demand cannot sustain and requires to be set aside which we hereby do. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै / CHENNAI