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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH. WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Date 08.04.2008

Appeal No. E/188/2008 & E/S/220/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
M/S R.T.PAPER BOARDS LTD.
NARELA ROAD. KUNDLI. DIST-SONEPAT. HARYANA — Appellant

Vs

M/S R.T.PAPER BOARDS LTD. — Respondent

C.C.E. ROHTAK

STAY ORDER NO. 321/08-EX. Excise dated 25-3-08

I am directed to transmit herewith a certified copy of **Final order No.** 130/08 passed by the Tribunal under Section 35-C(1)of Central Excises Act. 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   C.C.E. ROHTAK
   SCO NO.6 SECTOR 1. ROHTAK.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   B-6/10. SAFDARJUNG ENCLAVE. NEW DELHI-110029
3. C.D.R.
4. ~~J.D.R.~~
5. Bar association. CESTAT. New Delhi
6. M/s. Deeparchi Publications. M-93. marg. 43. saket. New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R. Venkatraman Constt. 44-B. S.Suncity, Ghaziabad -
10. Nidheshak publications. I.P.Estate. new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35. West Punjabi Bagh,
12. Co. Law Institution
13. TAX INDIA. B-XI/8183. Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Excise Appeal Branch)

as waste and scrap the appellant has availed cenvat credit before invoking the provisions of rule 3(5A) of the Cenvat Credit Rules. In support of his contentions, he also relied on the decision of the Tribunal in the case of **K.M. Sugar Mills Ltd. Vs. CCE, Allahabad**, reported in 2004(164) ELT 40 (Tri.-Del.).

4. The learned DR submits that the appellant admittedly was in the cenvat scheme and therefore it was presumed that they were availing cenvat credit both for raw materials and capital goods. When they are claiming the benefit by way exception to the provisions of rule 3(5A) of the Cenvat Credit Rules, it is their responsibility to produce the documents to show that they have not taken cenvat credit on these capital goods.

5. We have carefully considered the submissions and glanced through the voluminous records produced before us. We find the matter relates to period prior to 1995 and that the department has merely gone on the presumption that they ought to have availed cenvat credit on capital goods as well. The appellant has also taken a rigid stand without making efforts to produce the list of machinery taken over by the successor companies whenever there was a change in the ownership of the company. Some of the documents produced now have not been produced at earlier proceedings and hence the factual position has not been correctly appreciated at the level of the original authority and, therefore, we deemed proper to set aside the order and remand the matter for de novo consideration keeping all issues open. We direct the appellant to file written submissions along with evidence they want to rely on within two months from the date of receipt of this order. The original authority shall decide the matter expeditiously thereafter but within

two months after expiry of time given for filing written submissions. He shall also give reasonable opportunity to the appellant before the matter is decided.

6. The appeal is allowed by way of remand on the above terms. Stay petition is also disposed of.

[Dictated and pronounced in the open Court]

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member(Technical)

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