IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

Excise Appeal Nos.1545 & 1798/06

[Arising out of Order-in-Original No.01/LDH/06 & 06/LDH/06 dt.8.2.06 & 21.2.06 passed by Commissioner of Central Excise,,Ludhiana)

For approval and signature:
Hob'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

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1. Whether Press Reporters may be allowed to see: the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of : the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?

3. Whether their Lordships wish to see the fair : copy of the order?

4. Whether order is to be circulated to the : Department Authorities:

M/s. Shreyans Industries Ltd.
M/s. Satia Paper Mills Ltd. Appellant

Versus

CCE, Ludhiana Respondent

Appearance

S/Sh. V.Lakshmikumaran with R.K.Hasija, Advs. For Appellant

Sh. V.K.Agarwal,Authorised Departmental Representative(DR)For Respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDEN
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Date of decision: ~~23.4.08~~ 2.5.08

FINAL Order No. 232-233/08-EX

Per Rakesh Kumar:

These two appeals, involving a common issue have been filed by M/s. Satia Paper Mills, Mukatsar (hereinafter referred to as the appellant No.1) against order-in-original No.06/LDH/06 dt.21.2.06 passed by Commissioner of Central Excise, Ludhiana and by M/s. Shreyans Inds. Ltd.(Unit Shreyans Paper), Ahmedgarh(hereinafter referred to as appellant No.2) against order-in-Original No.01/LDH/06 dt.8.2.06 passed by the same adjudicating authority. These units manufacture Printing & Writing Paper mainly from agro residues i.e. wheat/rice straw, bagasse, Kahi, jute caddy sarkanda etc. The Commissioner by the above mentioned two orders denied the benefit of exemption under Notification No.6/02-CE dt.1.3.02, as amended by Notification No.48/04 dt.10.9.04 (S.No.86A read with Condition No.14A) and confirmed the demand of duty amounting to Rs.2,90,04,145/- against the appellant No.I and duty demand amounting to Rs.2,22,52,632/- against appellant No.2, alongwith interest on the duty at the applicable rate under Section 11AB and also imposed penalty on them under Rule 25(1) of Central Excise Rules,2002.

2. Notification No.6/02-CE dt.1.3.02 as amended by Notification No.48/04-CE dt.10.9.04(S.No.86A) prescribes a concessional rate of duty at 12% advalorem on 'paper and paperboard or articles made therefrom' manufactured, starting from the stage of pulp, in a factory, and such pulp contains not less than 75% by weight of pulp made from materials other than

bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags. This exemption is subject to a condition (condition No.14A) that the exemption shall not be applicable if the factory in which the said goods are manufactured has a plant attached thereto for making bamboo or wood pulp. According to the Revenue, since both the units used wood chips of Safeda(Eucalyptus) waste and Veneer waste, even though alongwith Cereals straw, Jute caddy, begasse etc. and since the digesters in both the units are capable of processing wood chips, the same have to be treated as the units having a plant attached thereto for making bamboo or wood pulp and hence would not be eligible for this exemption. It is on this basis that the above mentioned amounts of duty have been demanded from these units for the period 10.9.04 to 31.8.04.

3. Heard both the sides.

3.1 Shri V.Lakshmikumaran, Ld. Counsel appearing on behalf of the appellants vehemently argued that both the units are eligible for the exemption as none of them have a plant for making bamboo or wood pulp attached to them. The submissions made by Shri Lakshmikumaran are, in brief, as under:

1). The appellant's factory is manufacturing paper starting from the stage of pulp and such pulp contains not less than 75% by weight of pulp made from materials other than bamboo, hard woods, soft woods, reeds(other than Sarkanda) or rags. Therefore, there is no doubt about the first condition being satisfied by the appellants.

2). As regards the question as to whether the units of the appellants have plant attached thereto for making wood pulp, in this regard specific references were made by the appellants to Indian Institute of Technology, Roorkee, Deptt. Of Paper Technology and Prof. A.K.Ray, Head of the Deptt. of Paper Technology, IIT Roorkee after studying the manufacturing process in both the units has given opinion that both the units are basically suitable for pulping of non-woody fibrous raw-materials including agriculture residues. While the unit of appellant No.1 has a continuous Pandia type paper digester using soda process, the unit of appellant No.2 has rotary spherical digesters using soda process and both types of digesters are used for processing agro waste and not wood. The digesters meant for making pulp from agro waste cannot be used for making wood pulp.

3) A wood pulp plant has provision for storing timber, machinery for debarking, chiping etc. None of these units have such facilities and hence the same cannot be treated as paper mills with attached bamboo or wood pulp plant. Judgment of the Tribunal in the case of Ballarpur Industries Ltd. vs CCE, New Delhi reported in 1984(17)ELT.378(Tri.) was cited wherein it was held that the words "plant attached thereto for making bamboo pulp" in the notification No.208/67-CE should be interpreted as a plant designed and in fact used for making bamboo pulp and mere fact that the plant was capable of being used for making bamboo pulp would not disentitle the appellants to the benefit of the exemption.

4) There is no allegation from the Revenue that the paper being manufactured by the appellants contains less than 75% of the pulp made from material other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags. When this is so, just because small quantity of veneer waste is used for making the pulp, which consist more than 75% of agro waste, the benefit of duty exemption cannot be denied to the appellants. The plants for making pulp in the unit of the appellants are not the plants for making wood pulp. They are the plants for making pulp containing not less than 75% by weight of the pulp made from materials other than bamboo, hard woods, soft woods, reeds (other than sarkanda) or rags.

3.2. Shri V.K.Agarwal, Ld. Departmental Representative emphasized that both the units have digesters which are capable of making pulp from wood and, therefore, these units would not be eligible for this exemption. In this regard, the judgment of the Hon'ble Supreme Court in the case of Central Pulp Mills Ltd. vs CCE, Surat reported in 1998(97)ELT.215(SC) ~~were~~ was cited wherein with reference to exemption notification No.138/86-CE, which prescribes concessional rate of duty for paper subject to condition that the factory does not have a plant attached thereto for making bamboo pulp or wood pulp, Hon'ble Supreme Court held that when the appellants have such a plant, just because they have suspended the operation of the pulp mill by detaching the chipping and chips washing unit for the time being, they do not satisfy the condition of the notification and accordingly, they would not be eligible for the benefit of Notification No.138/86-CE. It was also pleaded that the technical opinion of the Head of the Deptt. of Paper Technology, IIT Roorkee relied upon by the appellants, on the contrary, supports the department case, as in this report, it has been clearly mentioned that the digesters in the units can process wood for making wood pulp though it is not normally done. It was also pleaded that the cutters meant for cutting Sarkanda can also be used for chipping woods as mentioned in the IIT's report and it also shows that these plants can make wood pulp.

4. We have considered the rival submissions. The short ~~percent~~ point to be decided in both these appeals is as to whether the appellants are eligible for the benefit of exemption Notification No.6/02-CE as amended by Notification No.48/04-CE(S.No.86A read with condition No.14A). Exemption Notification No.6/2002-CE dt.1.3.02, as amended by notification No.48/2004-CE dt.10.9.04(S.No.86A) prescribes a concessional rate of duty of 12% advalorem "for paper and paper board and articles made therefrom" manufactured in a factory starting from the stage of pulp, which contains not less than 75% by weight of pulp made from materials other than bamboo, hardwoods, soft woods, reeds (other than sarkanda) or rags, subject to condition that the factory does not has a plant attached thereto for making bamboo or wood pulp. Thus for being eligible for this exemption, two conditions must have satisfied :-

a) the paper/paper board must have been made from the stage of pulp and the pulp contains not less than 75% by weight of pulp made from material other than hard woods, soft woods, bamboo, reeds (other than sarkanda) or rags i.e. the pulp made from agro residues like baggase, wheat/rice straw, jute caddy etc. and

b) the factory should not have an attached bamboo or wood pulp plant.

The Commissioner has rejected the claim of both the appellantsfor this exemption on the ground that the pulp making plants in both the units are capable of making wood pulp also and therefore, the same have to be treated as wood pulp plants.

5. After considering the rival submissions on this point, we, for the reasons given below, are of the view that the pulp making plants attached to the appellants' factories cannot be considered as the plants for making bamboo or wood pulp:-

1) So far as appellant No.1 is concerned, their main raw materials are wheat straw, sarkanda, bagasse, waste paper (totally about 97 & 98%)and only the remaining 2 to 3% of the raw material is veneer wood chips and wood pulp purchased from outside. In their factory, there are three paper machines. Machine No.1 and II have a common digester of 40 m.t./per day capacity. It is a continuous digester. There is no digester with machine No.III. Thus in this factory, there is a common digester which processes mainly the agricultural residues like wheat straw, bagasse, sarkanda and waste paper. Mixing small quantity of veneer waste alongwith other agro residues would not make it a word pulp plant. On a reference from the appellant No.1 to Central Pulp & Paper Research Institute, Saharanpur, which is an institute under the Ministry of Commerce, Dr. R.M. Mathur,

Scientist of the Institute vide his letter dt.25.4.05 has given the following opinion

> "On analyzing technically, the mill does not have any plant for wood debarking, wood chipping, separation of dust from chips in cyclone separator, wood chip screening and the chip transportation system. Based on these facts, it can be said that the plant is basically suitable for pulping of non woody fibrous agriculture residues only. Trial usage of eucalyptus shavings or Veneer cutting has been done by using equipments and processes which are not normal for pulping of woody fibrous raw materials. In a nutshell, this plant does not have any facility for hard wood pulping".

Besides this \, Dr. A.K.Ray, Professor & Head , Deptt. of Paper Technology, IIT, Roorkee vide his letter dt. 15.5.06 has also given the same opinion. According to both these opinions, the design of straw cutter in this unit is such that it can be used only for cutting of sarkanda , straw or similar type of materials and these cutters are not suitable for cutting/chipping of woody materials for making wood pulp, and that Pandia type continuous digester using soda process being used in this unit is generally used for cooking non woody fibrous raw materials. The Commissioner in his order, other than referring to the some statement made by the appellant's Advocate at the time of personal hearing that it is techanically possible to process wood/bamboo pulp in the digester installed in the factory, has not given any reasons for rejecting the opinion of two experts in this filed.

2) As regards the unit of Appellant No.2, their raw-material are cereal straw, sarkanda, jute caddy and waste paper (92% to 95%) and 5 to 8% wood ~~showing~~ shavings/ veneer cuttings and wood pulp. There are two cutters in this unit – one for cutting sarkanda/straw and the other for cutting jute caddy.

The sarkanda cutter is also used for cutting wood showings. There are ten "Spherical Digesters" in this unit which use soda process for cooking. Eight digesters are for agricultural residues and wood chips and two digesters are for long fibre raw materials, which according to the appellant, is jute caddy not wood chips (statement dt.9.8.05 of Shri Pradeep Verma, General Manager(Production) and reply dt.25.11.05 of the appellant to the SCN). In this case also, Central Pulp & Paper Research Institute and IIT, Roorkee in their separate opinion have opined that the appellant's plant appears to be suitable for pulping agricultural residues. Here also the Commissioner has not given any reasons as to why the opinion of these technical experts is not acceptable.

3) A wood/bamboo pulp plant has bamboo/timber storage yard, wood debarking machine, wood chipping machine, cyclone separation for removal of dust, wood chip screening machine for removing cut size chips etc. None of these two units have any such machinery. According to opinion of the above mentioned experts, the cutters in both the plants are not suitable for chipping wood. Just because wood pulp can be made from veneer chips in their plants, it does not mean that their plants are suitable and designed for making wood pulp. Tribunal in case of Ballarpur Industries Ltd. vs Collector of Central Excise, Delhi, reported in 1984(17)ELT.378(Tri.) has, while interpreting the scope of the expression – "plant attached thereto for making bamboo pulp" in the exemption notification No.208/67-CE, which exempted from duty first 1000 m.t. clearance of paper during a financial

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year, from a unit not having "any plant attached ~~therefore~~ for making bamboo, pulp", held that these word must be interpreted as a plant designed and in fact used for making bamboo pulp, and mere fact that the plant was capable of being used for making bamboo pulp would not disentitle the appellants to the benefit of the notification. This judgment is squarely applicable ~~application~~ to the facts of this case. Since these ~~then~~ plants are not designed for making wood or bamboo pulp but admittedly make wood pulp containing 75% by weight of agro residues waste based pulp, the same cannot be called "wood or bamboo pulp plants".

4) The judgment of the Hon'ble Supreme Court in the case of Central Pulp Mills vs CCE, Surat (Supra) cited by the Ld. Departmental Representative is not applicable to the facts of this case as in that case, there was a complete wood or bamboo pulp making plant in their factory and in order to avail the benefit of exemption under notification No.138/86-CE, the part of the factory making bamboo or wood pulp had been detached and the power supply to the pulp plant cut off. It is in these circumstances that the Hon'ble Supreme Court held that just because the appellants had suspended the operation of wood/bamboo pulp plant by detaching the chipping and chip washing unit, it could not be held that their factory did not have a plant attached for making bamboo or wood pulp, as all these operations were of temporary nature and could be reversed at the mill and convenience of the appellants. In this case, the appellants do not have the wood chipping, chip washing plants and all they have for pulp making are digesters, which as per

the opinion of the technical experts in this field, are suitable for processing agro waste like wheat/rice straw, sarkanda, jute caddy etc.

6. In view of the above, we are of the view that the units of both the appellants are eligible for the benefit of exemption under notification No.6/2002-CE , as amended by Notification No.48/2004-CE dt.10.9.04(s.No.86A). The Commissioner's orders No.6/LDH/06 dt.21.2.06 and 01/LDH/06 dt.8.2.06 denying the benefit of this exemption to the appellants and demanding duty from them on this basis for the period from 10.9.04 to 31.8.05 and imposing penalty on them are not sustainable and the same are set aside. Both the appeals are allowed.

Pronounced on 2/5/08

(Rakesh Kumar)
Member(Technical)

(S.S.Kang)
Vice President

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