

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

Appeal No. E/5538/2004 - EX[DB]

Date 30/03/2009

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

To :
M/S STAR PAPER MILLS LTD.
SAHARANPUR U.P
247001
M/S STAR PAPER MILLS LTD.

Appellant
Vs
Respondent

C.C.E.MEERUT-I

EX[DB] dated 05-2-09

I am directed to transmit herewith a certified copy of Final order No. 230/2009-
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

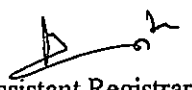
C.C.E.MEERUT-I

MANGAL PANDAY NAGAR

2. Adv. / Consult *SH. RAVI RAGHAVAN, ADV.,*
B-6/10, S.J. ENCLAVE,
N. DELHI-29

3 C.D.R
~~4 F.C.D.R.~~

- 5 Bar association, CESTAT, New Delhi
- 6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
- 7 M/s Centax Publications (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
- 8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
- 9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT, U.P.
- 10 Nidheshak publications, I.P.Estate, new Delhi
- 11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
- 12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai
- 13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kunj, New Delhi - 110070
- 14 Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
- 15 Office Copy
- 16 Guard file


Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Excise Appeal No.5538 of 2004-Excise Branch

[Arising out of Order-in-Appeal No.578-CE/APPL/MRT-I/2004, dated 30.09.2004 passed by the Commissioner of Central Excise (Appeals), Meerut-I]

Date of Hearing/ Decision: 05.02.09

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)

Hon'ble Mr. P.K. Das, Member (Judicial)

-
1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
 2. Whether it should 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 Departmental authorities? :
-

M/s. Star Paper Mills Ltd.

...Appellants

[Rep. by Shri Ravi Raghavan, Advocate]

Vs.

CCE, Meerut

...Respondent

[Rep. by Shri S.N. Srivastava, DR]

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

FINAL Order No. 230/09-EX Dated: 05.02.2009

Per P.K. Das:

Heard both sides and perused the records.

2. The dispute relates to as to whether the cash discounts allowed by the appellants would be included in the assessable value. It is seen that the cash discount was allowed by the appellants to the customers when

the payments were received within the time. It has been alleged that in some cases, the cash discount has not actually been passed to the customers as they have not made the payment within the time.

3. Ld. Advocate submits that at the instances of the central excise officers, they have paid the duty under protest on the cash discounts after clearance of the goods, which were not actually passed to the customers. They claimed the refund, which was rejected by the lower authorities. He submits that the Larger Bench of the Tribunal in the case of Commissioner of Central Excise, Ahmedabad-III Vs. Arvind Mills Ltd. reported in 2006 (204) ELT 570 (Tribunal-Larger Bench) held that the cash discount whether availed or not are to be granted as abatement even after 1.7.2000.

4. In view of that, we find that the issue has already been decided by the Larger Bench of the Tribunal in favour of the assessee. Accordingly, we allow the appeal of the appellants in respect of refund claim on merit. However, the Adjudicating Authority is directed to examine unjust enrichment and to decide the refund claim in accordance with law.

Order dictated & pronounced in open court on 5.2.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.