

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

Appeal No. E/145 /2007-SM[BR]

Date 29/08/2008

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

To :
RANA PAPERS LTD.

8TH K.M. JANSATH ROAD, MUZAFFARNAGAR-
252002 (U.P.)

RANA PAPERS LTD.

Appellant

Vs

Respondent

C.C.E. MEERUT - I

I am directed to transmit herewith a certified copy of Final order No. 1216 / 2008 -SM[BR] dated 21.8.2008

passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar

(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. MEERUT - I

MANGAL PANDEY NAGAR, MEERUT (U.P.)

2. Adv. / Consult

MR.AALOK ARORA,ADV

82-MISSION COMPOUND,SAHARANPUR (U.P.)

3. S.D.R.

4. J.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 Delhi -

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 60017

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
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO. 2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I**

Excise Appeal No. 145 of 2007-SM

[Arising out of Order-in-Appeal No. 205-CE/MRT-I/2006 dated 09.10.2006 passed by the Commissioner (Appeals) Central Excise, Meerut]

Date of Hearing/ decision: 21.08.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President

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 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 Rana Papers Limited

Appellant

Vs.

CCE, Meerut-I

Respondent

Appearance:

Mr. Alok Arora, Advocate for the Appellant

Mr. C.S. Rajput, Departmental Representative for the Respondent.

CORAM: Mr. Justice S.N. Jha, President

Final ORDER No. 1216/08-SM(BR)

Per S.N. Jha:

This appeal by the assessee is directed against the order of the Commissioner (Appeals) dismissing the appellant's appeal which was directed against the order of the Assistant Commissioner by which the order of the Deputy

Commissioner directing the appellant to pay duty from account current only on consignment basis for the period from 19.12.2001 to 18.02.2002 was upheld.

2. The appellants were paying central excise duty on fortnightly basis in terms of rule 8 of the Central Excise Rules. Sub-rule (4) thereof (as it stood prior to 01.04.2005) laid down-

“4) If the assessee defaults,-

- (i) in payment of any one instalment and the same is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year, or
- (ii) in payment of instalment by the due date in a financial year, whether in succession or otherwise,

then, the assessee shall forfeit the facility to pay the dues in instalments under this rule for a period of two months, starting from the date of communication of the order passed by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, in this regard or till such date on which all dues are paid, whichever is later, and during this period the assessee shall be required to pay excise duty for each consignment by debit from the account current and in the event of any failure, it shall be deemed that such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow”.

As circumstances would have it, the appellant made defaults in payment of instalments during parts of the period between first fortnight of June 2001 and second fortnight of October 2001. They discharged the duty liability for the period, with interest, on different dates in the manner mentioned in para 2.1 of the grounds of appeal. So far there is no dispute. The dispute arose from the fact that the appellant paid the duty from the cenvat account and not from the current account. The case of the appellant is that in terms of sub-rule (4) of Rule 8, as it stood prior to amendment under notification dated 31.3.2005 they had option to pay the duty either from PLA or from cenvat account. By the said notification the words “notwithstanding anything contained in sub-rule (4) of rule 3 of CENVAT Credit Rules, 2004” were inserted after the words “and during this period” and before the words “the assessee shall be required to pay”. After the amendment, it is submitted, Rule 3(4) of the Cenvat Credit Rules having been excluded, the assessee has no option but to pay excise duty for each consignment by debiting

from the current account. The amendment being prospective, in force from 1.4.2005, the case of the appellant would be governed by the erstwhile provision. In support of their case, the appellant rely on the Larger Bench decision in Noble Drugs Limited vs. CCE, Nasik -2007 (215) ELT 500 (Tri. L.B.). Reliance is also placed on a decision of the Bombay High Court in Lloyds Steel Industries Limited vs. Union of India -2005 (183) ELT 351 (Bom.).

3. On behalf of the Revenue, learned DR placed reliance on Aeon's Const. Products Limited vs. CCE, Chennai – 2005 (179) ELT 449 (Tri. Chennai) and SU-VI Pharmaceuticals & Chem. Ltd., vs. CCE, Pune-III -2008 (223) ELT 86 (Tri.- Mumbai). The said decisions do hold that on forfeiture of the instalment facility, in case of default, the assessee is required to pay excise duty from the current account and he cannot utilize the cenvat credit under Cenvat Credit Rules for the same. However, the decisions are by Single Member Benches and in view of the decision of the Larger Bench in Noble Drugs Limited (supra) cannot be said to have correctly laid down the law. The Larger Bench in fact decided the issue in the light of a decision of the Kerala High Court. The Bombay High Court has taken the same view in Lloyds Steel Industries Limited (supra).

4. In view of the above, payment of excise duty from cenvat credit account cannot said to be illegal and no further liability can be fastened on the appellant for default in payment of instalments under rule 8 of the Central Excise Rules.

5. In the result, the impugned orders of the Assistant Commissioner, Commissioner (Appeals) as well as the order of the Deputy Commissioner dated 18.12.2001 are set-aside. The appeal is allowed accordingly.

[Dictated and pronounced in the open Court on 21.08.2008]

(Justice S.N. Jha)
President

[Pant]