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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/902 /2007 – SM[BR] Date 26/08/2009

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

To :
C.C.E, MEERUT-II
EXCISE CCHOWK, UNIVERSITY ROAD, MANGAL
PANDEY NAGAR, MEERUT-250005
C.C.E, MEERUT-II Appellant
Vs
MULTIWAL PULP & BOARD MILLS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1081 / 2009 –SM[BR] dated 12.8.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   MULTIWAL PULP & BOARD MILLS PVT. LTD.
   BAZPUR ROAD, KASHHIPUR.
2. Adv. / Consult SHRI RAJESH JAIN ADV.
   A-2/142 , SAFDARJUNG ENCLAVE NEW DELHI

3 S.D.R
~~4 J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CENTRAL EXCISE APPEAL NO. 902 OF 2007-SM

[Arising out of Order-in-Appeal No. 01-CE/MRT-II/2007 dated 04.01.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut-II]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
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 Departmental authorities?	Yes

Commissioner of Customs & Central Excise, Meerut - II — Appellant

Vs.

M/s. Multiwal Pulp & Board Mills Pvt. Ltd. — Respondent

Appearance:

Shri I.K. Baig, SDR for the Revenue;
Shri Rajesh Jain, Advocate for the respondents

Coram:

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

Date of hearing/decision: 12th August, 2009

FINAL ORDER NO. 1081/2009 SM(BR) **dated** _________

Per P.K. Das:

Revenue filed this appeal against order of the Commissioner (Appeals) whereby adjudication order was set aside.

2. Relevant facts of the case in brief are that the respondents ~~appellants~~ are engaged in the manufacture of Kraft Paper classifiable under Sub-heading 4804.90 of the Schedule to the Central Excise Tariff Act, 1985. They are availing Cenvat credit benefit. On 9.10.2003 they started clearing of goods at nil rate of duty under Notification No. 49/2003-CE dated 10.6.2003. They opted for provisional assessment under Rule 9 of Central Excise Rules, 2002 for clearance of excisable goods at nil rate of duty under Notification No. 49/2003-CE dated 10.6.2003. A show cause notice dated 9.11.2004 was issued proposing to recover inadmissible credit amounting to Rs. 3,47,505/- availed on capital goods procured during the period December, 2002 to September, 2003 and utilized by them towards payment of Central Excise duty under Rule 12 of Cenvat Credit Rules, 2002 read with Section 11A of Central Excise Act, 1944 along with penalty and demand of interest. Original authority confirmed the demand of Rs. 3,47,505/- under Section 11A of Central Excise Act, 1944 and imposed penalty of equal amount under Section 11AC of the Act along with interest. Commissioner (Appeals) set aside the

adjudication order on the ground that during the relevant period the assessment was provisional and, therefore, demand of duty under Section 11A of the Act is not sustainable. Hence, Revenue filed this appeal.

3. Learned D.R. on behalf of the Revenue reiterates the finding of the Adjudication authority. He submits that the Commissioner (Appeals) decided the matter without going into the merit on the ground that the assessment was provisional. He submits that the respondents opted exemption on 9.10.2003 and provisional assessment would apply after the said date. He also submits that in the present case period of dispute is December, 2002 to September, 2003 as revealed from the show cause notice. Thus, the order of the Commissioner (Appeals) is not proper.

4. Learned Advocate on behalf of the respondents reiterates the finding of the Commissioner (Appeals) and submits that the Commissioner (Appeals) has rightly set aside the adjudication order as the show cause notice is premature. He also submits that it has been alleged in the show cause notice that capital goods were exclusively used in the exempted goods under notification No. 49/2003-CE dated 10.6.2003. It is his contention that provisional assessment would apply in the present case also.

5. After hearing both sides and on perusal of the records, I find that the Commissioner (Appeals) set aside the adjudication order on the ground that show cause notice was issued before finalization of assessment by the proper officer. It is revealed from the show cause

notice that recovery of Cenvat credit availed on capital goods and utilized during the period December, 2002 to September, 2003. Both the parties agreed that the provisional assessment was opted from 9.10.2003 by availing exemption under notification No. 49/2003-CE date d10.6.2003. Thus, this is apparent on the face of the record that there was no provisional assessment during the relevant period. Learned D.R. and the learned Advocate both argued on merits but, I find that the Commissioner (Appeals) had not given any finding on merits. It is already observed that during the relevant period there was no provisional assessment and, therefore, impugned order of the Commissioner (Appeals) is not sustainable.

6. As the matter was not decided by the Commissioner (Appeals) on merit, impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide on merit. All the issues are kept open. Appeal filed by the Revenue is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK