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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/1603 - 1604/2006 – SM [BR]

Date 15/12/2010

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

To :
CHANDA PAPER MILLS LTD.BILASPUR
NAINITAL ROAD, BILASPUR DISTT. RAMPUR.
CHANDA PAPER MILLS LTD.BILASPUR

Appellant
Vs
C.C.E. MEERUT II
Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1438 – 1439 / 2010-SM[BR] dated 7.12.2010 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 II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult SHRI KAPIL VAISH C.A.
   B-51, BUTLER PLAZA, CIVIL LINES,
   BAREILLY[U.P]

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10 Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

3. CHANDA PAPER MILLS LTD.BILASPUR
NIANITAL ROAD, BILASPUR, DISTT. RAMPUR.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 07.12.2010

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Excise Appeal No. 1603-1604 of 2006-SM

[Arising out of Order-in-Appeal No. 295-296-CE/MRT-II/05 dated 30.11.2005 passed by the Commissioner (Appeals) Central Excise, Meerut-II].

M/s Chadha Paper Mills Limited — Appellants

Vs.

CCE, Meerut — Respondent

Appearance:

Rep. by Sh. Kapil Vaish, C.A. for the appellants.

Rep. by Sh. R.K. Gupta, DR for the respondent.

Coram: Hon'ble Sh. Justice R.M.S. Khandeparkar, President

Final Oral Order No. 1438-1439/2010 SM (BR)

Per: Hon'ble Sh. Justice R.M.S. Khandeparkar:

Heard the learned Advocate for the appellants and DR for the respondent.

2. Since common questions of law and facts arise in both the matters, appeals were heard together and are being disposed of by this common order.

3. Both the appeals arise from common order passed by the Commissioner (Appeals) Meerut on 30.11.2005. By the impugned order, the appeals filed by the appellants against the orders by the adjudicating authority were dismissed. The adjudicating authority by his two separate orders dated 16.05.2005 had disallowed the credit to the tune of Rs.5,59,781/- in total and ordered recovery thereof alongwith equal amount of penalty.

4. The appellants are engaged in manufacture of M.G. Kraft paper classifiable under sub-heading No. 4804.90 of the schedule to the Central Excise Tariff Act, 1985 and has been availing facility of credit of duty paid in terms of Rule 3 of the Cenvat Credit Rules, 2002. During the period from November 2003 to March 2004, the appellants availed and utilized cenvat credit to the tune of Rs. 1,33,980/- on the items like Welding Electrodes, Gland Packing, Structures, HR S.S. Casting, Stainless Steel Coil, Sheet, S.S. Hose assembly, Sector Assembly, Rubber Hose, Ropes and wire mess of Iron and Steel claiming the said items to be covered under the definition of capital goods provided under Rule 2(b) of the Cenvat Credit Rules, 2002. During the period from June 2003 to October 2003, the appellants had taken

cenvat credit to the tune of Rs. 4,36,574/- on items like Ralling Post Assembly, Stair Case, Stainless Steel Coil, Sheet, Disc, M.S. Grating, Braching, Economiser Structure and Cashing, Gland Packing, C.R. Coil, Stainless Steel Plate, Coil, Ducting, Hot Galvanised Cable Tray, Tought Sheet, Fiber Frax Ceramic Fiber Rope and Structure Material Columns Beams and Bracing etc. claiming the same to be covered by the definition of capital goods under Rule 2(b) of the Cenvat Credit Rules, 2002. In addition, the appellants also availed credit in relation to Fuel Oil Additive. However, they are not concerned about the same in this case as the claim in that regard was already allowed by the adjudicating authority and the same was not challenged before the Commissioner (Appeals).

5. Though, the impugned order as well as that of the adjudicating authority is sought to be challenged on various grounds, it is not necessary to refer to all those grounds. Bare perusal of the orders passed by the lower authorities discloses that the authorities below while dealing with the issue regarding the claim of the appellants in respect of cenvat credit availment and utilization in relation to the duty paid on the above referred items, the authorities below by merely referring to clause (i) of Rule 2(b) of the said Rules has sought to deny the credit to all the items without analyzing whether such a credit would be available to the appellants by referring to any of the other clauses of the said rule. Indeed, even assuming that the appellants have referred to only one clause of Rule 2(b) while claiming the benefit of the credit, nothing can prevent the authority from ascertaining whether such benefit could be granted by referring to other clauses of the said rules. Once the party, on the basis of established facts before the authority, can disclose that it is entitled to avail such benefit under one of

the clauses of the said rule, if such benefit is indeed legally available to the appellants, the same could not be denied. No such exercise appears to have been done by the authorities below in the matter in hand.

6. Perusal of the impugned order rather discloses, as rightly submitted by the appellants, failure on the part of the authority to apply its mind to the facts of the case in the manner it was required to be applied. It is a matter of record that the adjudicating authority had allowed the credit of fuel oil additive and there was no appeal filed by the department against the said order. Even in the appeals filed by the appellants there were no cross objection, filed by the department. Being so, it was beyond the jurisdiction of the Commissioner (Appeals) to deal with the issue regarding the claim of credit pertaining to the duty paid on fuel oil additive as it was not under challenge. The Commissioner (Appeals) therefore, could not have denied the credit in that regard under the impugned order. The said finding of the Commissioner (Appeals), therefore, could not be sustained.

7. Learned Advocate for the appellants has fairly conceded that the claim relating to items like economizer structure and cashing, M. S. Grating, Structure Material Columns Beams and Bracing, Ralling Post Assembly, Stair Case, would not sustain in view of the decision of the Larger Bench in the case of **Vandana Global** vs. **CCE, Raipur** reported in 2010 (253) 440 (T. LB). However, as regards other items, the adjudicating authority will have to consider the same in accordance with the provisions of law.

8. Records disclose that the appellants had claimed credit in relation to the duty paid on stainless plate, stainless coil etc. stated to have been used in the manufacture of various tanks like feed tank, accept tank, preparation tank, storage tank, besides some other structures and items. Whenever such a claim is made, it is necessary for the authority to ascertain whether such tanks fall within the items described under the capital goods under the definition thereof in the said Rules. The same has to be done by analyzing the materials placed on record by the assessee. But it is not permissible for the authorities to deny the claim for the credit without analyzing the materials on record and ascertaining whether the goods have been utilized in the manufacture of the capital goods meant for the manufacture of the final product. In other words, the claim has to be ascertained whether it satisfies the Rule 3 of the said rules or not. While ascertaining the same, proper care should be taken to analyse the materials on record and whenever there is a claim with the goods to satisfy the requirement of definition of capital goods, the authority has to ascertain whether the goods fall within any of the clauses or the definition. As no such exercise having been done by the authorities below in the case in hand, the impugned order alongwith the order passed by the adjudicating authority cannot be sustained to the extent the same deny the credit on the items mentioned above. Needless to say that the item like fuel oil additive which is undisputedly covered by the decision of **Vandana Global** (supra) need not be considered while dealing with the claim of the appellants.

9. Accordingly, the appeals succeed, the impugned order alongwith the order passed by the adjudicating authority to the extent as stated above, are set aside and the matter remanded to the adjudicating authority to deal with the same afresh according to the provisions of law bearing in mind the observations made herein above. Needless to say that the order regarding denial of credit and the imposition of penalty as well as claim for interest stand set aside and authority below has to decide the issue afresh in accordance with provisions of law.

[Justice R.M.S. Khandeparkar]
President

/Pant/