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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/550 /2008 – SM[BR] Date 12/01/2010

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

To :
M/S CENTURY PULP & PAPER

LALKUAN,DISTT. NAINITAL

M/S CENTURY PULP & PAPER Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 63 / 2010 –SM[BR] dated 6.1.2010 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

MR.KAPIL VAISH

B-51, BUTLER PLAZA, 95, CIVIL LINES, BAREILLY.

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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Excise Appeal No. 550 of 2008-SM(BR)

[Arising out of Order-in-Appeal No. 241/CE/MRT-II/2007 dated 27.11.2007 passed by Commissioner (Appeals) Customs & Central Excise, Meerut-II]

For approval and signature:

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

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?	:	Yes
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

M/s. Century Pulp & Paper — Appellants

Vs.

Commissioner of Central Excise Meerut II — Respondent

Appearance:

Shri Kapil Vaish, Chartered Accountant for the Appellants
Shri S.N. Srivastava, SDR for the Respondent

Date of Hearing/decision : 06.1.2010

ORAL ORDER NO. 63/2010 SM(BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 241/CE/MRT-II/2007 dated 27.11.07.

2. Heard both sides.

3.1 The relevant facts, in brief, are that the appellants are manufacturer of writing and printing paper and they were having their unit in Uttarkhand in an area where the exemption under Notification No. 50/2003-CE dated 10.6.03 is applicable. There was a dispute and the matter came before the Tribunal and the Tribunal vide stay order dated 27.12.04 granted partial waiver of the dues, in pursuance of the order which was appealed against, subject to deposit of a sum of Rs.10 lakh. The appellant complied with the said order by debiting Rs.10 lakhs from their Cenvat account. The appeal was finally allowed in favour of the assessee by the Tribunal vide order dated 19.3.07.

3.2 Meanwhile, the appellant having expanded their capacity substantially started availing the benefit of exemption No. 50/2003 with effect from February, 2007.

3.3 Consequent to favourable order dated 19.3.07 of the Tribunal, the appellant claimed refund of Rs.10 lakhs deposited by them in pursuance of the earlier order of the Tribunal dated 27.12.04. They specifically made a request for payment of said amount in cash as from February, 2007, they were not required to pay any excise duty on their clearances and the Cenvat credit would be of no use to them. The original authority ordered sanction of the refund of Rs.10 lakhs and held that party was entitled to take credit of the said amount in RG 23C Part II only. Though the refund has been allowed, as the same was not allowed in cash, the appellant preferred appeal before Commissioner (Appeals) seeking refund in cash and Commissioner (Appeals) declined to interfere with the order of the original authority.

4.1 Learned Chartered Accountant for the appellants submits that the appellants are availing exemption from February, 2007 and they are not required to pay duty for a decade. In view of the order dated 19.3.07, it is clear that the denial of benefit by the Department during the earlier period was not justified and not legal and the order of deposit by the Tribunal dated 23.12.07 was made in such circumstances. But for the dispute raised by the Department, they would have utilised the credit prior to February, 2007 and to that extent they would have paid excise duty less in cash, as they have paid nearly 100 crores of excise duty in about three years preceding February, 2007. Therefore, he seeks the refund sanctioned should be converted as refund in cash.

4.2 In support of his above submissions, he relies on the decision of the Tribunal in the case of National Organic Chemicals Inds. Ltd. vs. CCE, Bombay III [1994 (70) ELT 722 (Tri)] (against which the appeal by the Department was dismissed by Hon'ble Supreme Court) and the decision of the Larger Bench of the Tribunal in the case of Gauri Plasticulture (P) Ltd. vs. CCE, Indore [2006 (202)ELT 199 (Tri-LB)] and the decision of the Tribunal in the case of Microstar Computers vs. CCE, Vapi [2008 (223) ELT 79 (Tri-Ahmd.)].

5. Learned SDR reiterates the finding of the Commissioner (Appeals). He particularly draws my attention to the fact that refund has not been denied to the appellant; and that the appellant has substantial credit even otherwise in the Cenvat account. The refund in cash of Cenvat credit can be given only in terms of Rule 5 of the Cenvat Credit Rules and the said Rule is not applicable to the present case. Therefore, he seeks upholding the order of the Commissioner (Appeals).

6. I have carefully considered the submissions from both sides. This is a peculiar case. The original authority has sanctioned the refund of pre-deposit which was made by the appellant in pursuance of the Tribunal's order dated 27.12.2004. It is not disputed that the appellants made the deposits by debiting in the Cenvat credit account. If they have paid by cash at that time, there would be no dispute about the payment of refund in cash. The appellants are still registered with excise authorities. They are availing benefit of exemption under Notification No. 50/2003 which is available, as of now, up to February, 2017. I have not been shown any specific provision in the Act or in the Rules enabling the refund of amount debited by using Cenvat credit to be paid in cash in a situation like the present case. This is clearly not governed by the provisions of Rule 5 of the Cenvat Credit Rules, 2004. The decision of the Tribunal in the case of National Organic Chemicals Inds. Ltd. was in the context of a benefit which was held available in pursuance of a decision rendered later by which time the notification allowing such benefit of set off was withdrawn. The decision of the Larger Bench in the case of Gauri Plasticulture (P) Ltd. relate to

denial of payment by using credit and making the assessee to pay the duty out of PLA. And in such situation it has been held that the assessee would be eligible for refund in cash. The decision of the Tribunal in the case of Microstar Computers was rendered following the decision of M/s. Gauri Plasticulture with a specific finding that the payment in PLA was under compulsion when there was enough balance of credit in RG 23. The facts of the present case is entirely different from the facts of the cases relied upon by the Chartered Accountant, and therefore, the ratio of those decisions cannot be applicable to the facts of this case.

8. In view of the above, I do not find any infirmity in the orders of authorities below which are primarily in favour of the assessee in as much as refund has been sanctioned and due to subsequent developments, the appellants are not in a position to utilise the same immediately.

9. The appeal is, therefore, rejected.

(M. Veeraiyan)
Member(Technical)

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