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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 24/03/2011

Appeal No. E/454 /2006 - EX[DB]

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

To :
C.C.E. CHANDIGARH
C.R. BUILDING, PLOT NO. 19, SECTOR 17-C,
CHANDIGARH 160017

C.C.E. CHANDIGARH Appellant

Vs

M/S SONA PAPER BOARDS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.299/ 2011 EX[DB]** dated 09-3-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
M/S SONA PAPER BOARDS LTD.
SONA PAPER BOARDS
LTD.VILLAGE KURANWALA,
BARWALA ROAD, DERABASSI.

2. Adv. / Consult
MR.GAGAN KOHLI
394,SECTOR-30 A, CHANDIGARH.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file
15. HON'BLE PRESIDENT.

Assistant Regist
(Excise Appeal Bran

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:9.3.2011

Central Excise Appeal No.454 of 2006

[Arising out of the order in appeal No.397/CE/CHD/05 dated 31.10.2005 passed by the Commissioner (Appeals), Central Excise, Chandigarh].

For Approval and Signature:

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

Hon'ble Shri Rakesh Kumar, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 26 of 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

C.C.E., Chandigarh .. Appellant

Vs.

M/s Sona Paper Boards Ltd. ... Respondents

Appearance:

Ms.Monika Batra, Authorized Departmental Representative(DR) for the Revenue and Shri Gagan Kohli, Advocate for the respondents

Coram: Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri Rakesh Kumar, Technical Member

FINAL Oral Order No. 299/2011-EX

Per Shri Justice R.M.S. Khandeparkar:

Heard the DR for the appellant and the Advocate for the respondents. This appeal arises from the order dated 31.10.2005 passed by the Commissioner (Appeals), Chandigarh. By the impugned order, the demand confirmed by the adjudicating authority to the tune of Rs.3,56,082/- has been reduced to the tune of Rs.3,22,731/- and the amount of penalty has been quashed and it has declared that the respondents are not liable to pay any interest.

2. The issue involved in the matter was whether the respondents who had opted for the benefit of Notification No.6.2000-CE dated 1.3.2000 had paid/reversed the amount equivalent to the credit taken on inputs in stock or used in the finished excisable goods lying in stock as on 1.3.2000 that is the day on which option available under the said exemption notification was sought to be availed by the respondents. The show cause notice dated 27.3.2001 was issued to the respondents in relation to the alleged failure to reverse the credit taken on inputs in stock and those used in the finished excisable goods lying in stock as on 1.3.2000 which was contested by the respondents by filing reply dated 27.12.2004 In fact, earlier the adjudicating authority by his order dated 30.10.2001 had confirmed the demand as was stated in the show cause notice which was further confirmed by the Commissioner (Appeals) by order dated 30.7.2003. However, the Tribunal set aside those orders vide its order dated 8.6.2004 and remanded the matter for de novo adjudication. Accordingly, the respondents in the said reply and submissions contended that the total liability in relation to the credit taken on the inputs lying in stock would be Rs.23,356/- and in relation to the inputs contained in the final excisable product was Rs.2,99,375/- totalling Rs.3,22,731/-, out of which they had already reversed an amount of Rs.18,115/-. As against this, the Superintendent, Central Excise Range - II, Dera Bassi under

his letter dated 27.7.2005 submitted a verification report to the effect that the credit taken on inputs lying in stock was Rs.24,529/- and credit taken on inputs contained in the final product was Rs.3,31,553/- as on 1.3.2000 totalling to Rs.3,56,082/-. The adjudicating authority while agreeing with the computation made by the Superintendent rejected the claim of the respondents on the ground that the respondents had failed to produce any document in support of their calculations. The Commissioner (Appeals) on the other hand while observing that the said finding about absence of evidence in support of calculations being not correct accepted the quantification of the liability as claimed by the respondents and reduced the demand from Rs.3,56,082/- to Rs.3,22,731/- while setting aside the order relating to the payment of interest and imposition of penalty.

3. The DR while challenging the impugned order submitted that the Commissioner (Appeals) was not justified in reducing the amount of liability which was confirmed by the adjudicating authority essentially on account of the party's failure to produce documentary evidence in support of their calculation claim. On the other hand, the Advocate appearing for the respondents submitted that the respondents were not aware of the basis on which Superintendent had made the calculations and quantified the liability.

4. Perusal of the impugned order undoubtedly, disclose that the liability has been reduced from Rs.3,56,082/- to Rs.3,2,731/- while accepting the calculations submitted by the respondents/assessees. It cannot be disputed that the finding of the lower appellate authority that the adjudicating authority erred in holding that the calculations submitted by the assessee were not supported by any documentary evidence, is in fact contrary to the records. However, it is to be noted that the confirmation of the liability by the adjudicating authority was merely on the basis of endorsement

of calculations by the Superintendent. Para 11 of the order passed by the adjudicating authority clearly states that " I agree with the above calculations of the computation of amount of duty involve and therefore, I hold that Rs.3,56,082 is recoverable from the party". We do not find any analysis or appreciation having been done by the adjudicating authority in relation to the method of calculation and the basis on which the calculations were made by the Superintendent or any efforts having been made to ascertain whether such method and the basis were correctly adopted and reliable one. Added to this as rightly submitted by the Advocate for the respondents and in fact recorded in the impugned order itself about the document regarding calculations made by the Superintendent was not furnished to the respondents. In other words, the method of calculations and the basis thereof adopted by the Superintendent was neither disclosed to the assessee nor analysed by the adjudicating authority. In such situation, we do not find any illegality in reducing the amount of liability from Rs.3,56,082/- to Rs.3,22,731/-.

5. As far as interest amount is concerned, however, it could not have been set aside by the Commissioner (Appeals), the same being statutory liability of the assessee. The order in relation to the setting aside the order of liability of interest , therefore, cannot be sustained and is, therefore, liable to be set aside and accordingly set aside.

6. As far as penalty aspect is concerned, the Commissioner (Appeals) has only observed that there is no question of mala fide on the part the respondents and therefore, the question of penalty does not arise. Undisputedly, the penalty was imposed under Rule 173Q, the same clearly provided that if the manufacturer avails credit contrary to the provision of law applicable to the facts of the case that he can be subjected to penalty as specified under the said provision of

law. It was sought to be argued that Rule 173Q would be attracted only in case of wrong availment of credit. The contention is totally unsustainable. The provision of law applies to the wrong availment of credit as well as wrong utilisation of credit and expression of wrong utilisation would include retention of the credit contrary to the provision of law. Being so, the Commissioner (Appeals) could not have interfered with the order relating to the imposition of penalty without analysing the above aspect. The approach of the Commissioner (Appeals) in that regard was not correct and therefore, the order in that regard cannot be sustained and the order of the adjudicating authority will have to be restored.

7. In the result, therefore, the appeal partly succeeds. The impugned order as far as it relates to reduction of quantification of the amount of liability from Rs.3,56,082/- to Rs.3,22,731/- does not warrant any interference and is accordingly confirmed. The impugned order setting aside interest liability and the penalty is set aside and the order of the adjudicating authority in that regard is restored.

8. The appeal accordingly stands disposed of in the above terms.

(Justice R.M.S. Khandeparkar)
President

(Rakesh Kumar)
Technical Member

scd/