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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 07/07/2011

Appeal No. E/2965-2966/2006,1052,2526,/2008,406-408/2009,
519, 525,729-730,850,855/2010- EX[DB]

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

To :
M/SBALLARPUR INDUSTRIES LTD
UNIT SHRIGOPAL,YAMUNA NAGAR,HARYANA

Appellant

Vs

M/SBALLARPUR INDUSTRIES LTD

Respondent

C.C.E. DELHIIII GURGAON

dated 06-7-11

I am directed to transmit herewith a certified copy of **Final order No.556-568/ 2011 EX[DB]**
passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. DELHIIII GURGAON
UDYOG VIHAR,UDYOG
MINAR,VANIJYA NIKUNJ,PHASE-
V,GURGAON.

2. Adv. / Consult
MR.SHIRIN KHAJURIA
S-336,GREATAR KAILASH PART II,N.DELHI

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. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
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15. CCE, PANCHKULA

Assistant Reg
(Excise Appeal Br

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

Excise Appeal Nos. 2965-2966 /2006- Ex(BR)
Excise Appeal No. 1052 /2008- Ex(BR)
Excise Appeal No. 2526 /2008- Ex(BR)
Excise Appeal Nos. 406-408 /2009- Ex(BR)
Excise Appeal No. 519/2010- Ex(BR)
Excise Appeal No. 525/2010- Ex(BR)
Excise Appeal No. 729-730 /2010- Ex(BR)
Excise Appeal No. 850/2010- Ex(BR)
Excise Appeal No. 855/2010- Ex(BR)

[Arising out of Order-in-Appeal No. 134-135/NS/GGN/2006 dated 23.5.2006 passed by the Commissioner of Central Excise, (Appeals), Gurgaon]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri 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. Ballarpur Industries Ltd. — Appellant

Vs.

Commissioner of Central Excise Gurgaon, Panchkula — Respondent

Appearance:
Ms. Shirin Khajuria, Advocate for the Appellants
Shri Sunil Kumar, SDR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 28.6.2011
Date of decision : 6 .7.2011

FINAL **ORAL ORDER NO.** ... -3 3/2011-EX

Per M. Veeraiyan (for the Bench):

1.1 Appeal Nos. E/2965/2006, E/406-08/2009, E/855/2010, E/519/2010, E/ 730/2010 involve a common issues.

1.2 Appeal Nos. E/2966/2006, E/1052/2008, E/2526/2008, E/850/2010, E/525/2010, E/729/2010 involve common issues.

2. Heard both sides.

3.1 In the first set of appeals referred in para 1.1, appellant challenges demand of amounts under 57AD of the Central Excise Rules, 1944 / Rule 6(3)(b) of Cenvat Credit Rule (in all cases) and imposition of penalties (in four cases) as they cleared 'waste pulp' during the period from August, 2000 to January, 2009 without payment of duty and without maintaining separate accounts for inputs. In these cases, first show cause notice dated 2.9.2005 was issued covering the period August 2000 to April, 2005 thus invoking extended period and thereafter periodical show cause notices have been issued and demands confirmed by the original authority and penalties imposed in some of the cases and the said orders stand upheld by the Commissioner (Appeals). The relevant facts, in these appeals are that the appellant manufactures paper and paper boards; that they have an integrated plant for manufacture of wood pulp and paper and that they have 6 paper making machines. Raw materials like wood chips and other fibre material are subjected to pulping by treating the same with caustic soda and the pulp is bleached and further processed. In respect of two machines contaminants collected at "centricleaners" are sent to the effluent treatment plant and after treatment disposed of as sludge. However, the contaminants in respect of four other machines were sent through "hydratreator" which enabled recycling of water and the solid /waste left at the bottom of the tank is called by them as waste pulp / sludge and sold at a minimum price varying from Rs. 3750 to Rs.5750/- Per MT. The department treated the same as pulp classifiable under Chapter heading 4701 and since the tariff rate for the same item is nil, and since the appellants have not maintained separate accounts in respect of inputs used for such exempted inferior pulp and other dutiable products, demand has been made under Rule 57AD of Central Excise Rules, 1944 and under Rule 6(3)(b) of Cenvat Credit Rules, 2004.

3.2 In the second set of appeals referred to para 1.2; appellant challenges demand of duty on 'waste paper sweepings' cleared by the appellants during the period from August, 2000 to January, 2009. The first show cause notice dated 6.9.2005 was issued demanding duty for the period August, 2000 to April, 2005, thus invoking the extended period and thereafter show cause notices were issued periodically. Original authority confirmed the demands and imposed penalties of equal amounts in 3 cases. The original authority however, did not impose penalty in other cases.

Commissioner (Appeals) confirmed the orders of the original authority. The paper waste obtained while sweeping the floor has been cleared at nominal price. The original authority treated the said paper as falling under Chapter Heading 470290 by holding the same as excisable goods which have arisen out of manufacturing process and demanded duty along with interest and imposed penalties which stands upheld by the Commissioner (Appeals).

4.1 Learned Advocate for the appellants submits that they are using quality pulp generated during the integrated process for further manufacture of paper. Waste collected at centricleaners of two of the paper making machines were sent through the effluent treatment plant and the resultant waste referred to as "sludge" is disposed off. In respect of waste collected at centricleaners of four other machines, the same is treated through "hydratreator" and the resultant product contains only 10 to 15% fibrous material, 70% moisture and the rest is inorganic substance. The wood pulp they used for further manufacture in their factory contained about 99% fibre and only 1% inorganic content. However, purchaser of such waste pulp can use the same for manufacture of cheap grade paper boards, that too only after enriching it. In view of the above, the waste pulp cannot be treated as arising out of manufacture but as a waste arising during the course of manufacture. The said product cannot be treated as excisable goods. Once it cannot be considered as excisable goods, the question of treating the same as exempted product does not arise. Under such a situation, the appellants should not be treated as manufacturing both dutiable and exempted products. The question of demand of any amount in terms of Rule 57AD(2)(b) CER, 1944 and Rule 6(3)(b) of CCR Rules, 2004, therefore, does not arise.

4.2 In this regard she relied on the following decisions :-

1. UP State Sugar Corporation Ltd. vs. CCE, Meerut
[2000 (120) ELT 454 (Tri);

2. CCE, Meerut I vs. Star Paper Mills Ltd.
[2003 (158) ELT 846 (Tri-Del);

3. Modi Rubber vs. UOI
[1987 (29) ELT 502];

4. Moti Laminates vs. CCE
[1995 (77) ELT 268 SC]; and

5. South India Viscose Ltd. vs. CCE
[2000 (117) ELT 798 (Tri-Del)].

4.3 Regarding invocation of extended period of limitation, in the case in appeal No. 2965/2006, she draws our attention to the finding of the original authority, that they have mis-declared the pulp as waste pulp to the department and submits that the said finding is erroneous. What was cleared by them was clearly a waste item and the fact of clearance of waste pulp has been declared by them to the Department as duly noted by the original authority. Therefore, the question of suppression of relevant facts or mis statement of any fact does not arise. Therefore, she submits that if the demand is up-held, the same should be restricted to normal period of limitation.

5.1 Learned Advocate submits that floor sweeping of paper and paper products can not by any stretch of imagination, be treated as a result of manufacture and subject to excise duty. She relies on the same decisions which she has relied upon in respect of waste pulp to contend that the same was not arising out of manufacture and the product was not excisable.

5.2 Regarding invocation of extended period of limitation, learned advocate submits that the department was fully aware of the entire facts. In this regard, she refers to the findings of original authority regarding a show cause notice No. 411 /AMB/ 2001 dated 1.11.2001 proposing demand of duty on waste paper. She submits that the distinction made by the authorities below that only dutiability of paper waste / bark was involved in the said show cause notice whereas in the instant case the issue of excisability and dutiability of waste paper is involved is artificial and does not merit acceptance. Therefore, there is no justification for invoking the extended period of limitation and imposition of penalties.

6.1 Learned DR submits that the appellants themselves have described the product coming out of hydrotreator as waste pulp. The paper pulp is clearly classifiable under Chapter heading 4701 and the same was subject to nil rate of duty. Merely because the purity of the pulp is not to the standard required by the appellants, the same cannot be treated as non-excisable goods. The use of the product by the buyers for manufacture of inferior paper and paper boards as recorded by the authorities below have not been disputed by the appellants. On the invocation of extended period of limitation, he reiterates the findings and reasoning of the authorities below.

6.2 Regarding the waste paper, he submits that the same have undergone all the manufacturing process as applicable to quality paper manufacture by them. The said paper has been treated as waste after having been manufactured and sold only as paper and therefore duty has been rightly demanded. On the invocation of extended period of limitation, he reiterates the findings and reasoning of the authorities below.

7.1 We have carefully considered the submissions from both sides and perused the records. The so called waste product arising from hydratreator attached to four paper making machines have been described by the appellants themselves as "waste pulp" and sold as such. It has not been disputed that the said waste pulp has arisen after the wood chips and other fibrous materials were subjected to pulping , bleaching and other processes. Merely because the quality is inferior and not to the standard required by the appellants, the said product cannot be treated as non-excisable . It is not being disputed that the buyers of these products have used the said waste pulp for manufacture of inferior grade paper and paper boards. Further processing of the waste pulp by the said buyers does not make the waste pulp cleared by the appellants as anything other than excisable goods. Since, what is described as waste pulp is basically pulp of inferior variety, which has been marketed, the same has rightly been treated as excisable goods. Since the rate of duty for the concerned tariff item was nil, the said goods have been rightly treated as exempted products. Undisputedly, the appellants are manufacturing dutiable products, namely paper. As manufacturer of dutiable paper and exempted pulp, in the absence of maintaining the separate accounts for inputs attributable to such exempted products, they were rightly held to be liable to pay amounts under Rules

57AD of the Central Excise Rules, and Rule 6 (3) (b) of Cenvat Credit Rules. However, as the appellants have undisputedly, indicated clearance of waste pulp in the returns, the allegation that they have declared the pulp as waste pulp is not substantiated. Undisputedly, what was sold by them was of quality not usable by them and therefore, their describing the same as waste pulp cannot be held to be mis-statement. Therefore, invoking the extended period of limitation for raising demands and imposition of penalties are not justified.

7.2 We find that demand on waste paper has been made on the ground that the said goods are excisable goods. Undisputedly, the appellants have in their integrated mill, starting with wood chips and other fibrous materials as raw materials and subjecting them to various processes, produced paper. Some small quantity of paper has got wasted only after the same came into existence as paper. The goods have been sold as waste paper, obviously, at a lower price compared to that of good quality of paper. It has not been disputed that the buyers have purchased them as paper and for using the same as paper. That being the case, the demand of duty on waste paper under Chapter Heading 470290 cannot be faulted. However, as duly noted by the original authority, there was a show cause notice issued in November, 2001 itself seeking to demand duty on waste paper. Under these circumstances, it cannot be held that the appellants have suppressed any relevant information regarding emergence of waste paper and that the department was not in the knowledge of relevant facts. Therefore, the invocation of extended period for demand of duty and imposition of penalties are not justified.

8. In view of the above, the Appeals are disposed of as follows:-

(a) The demands which are beyond the normal period of limitation in the cases dealt with in Appeal No. 2965/2006 and E/2966/2006 are set aside. Demands of duty within the normal period of limitation in these two cases and the entire demands in all other cases along with interest are upheld.

(b) Penalties in cases dealt with in Appeals No. E/2965/06, E/406-408/09, E/2966/06, E/1052/08, and 2526/08 are set aside.

(Pronounced in the open Court on 6/7/11)

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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