CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1497-1498 & 2297-2298 of 2007

(Arising out of Order-in-Appeal No. 15-CE/MRT-II/2007 & 16-CE/MRT-II/2007 dated 22.02.2007 and 125-CE/MRT-II/2007 & 124-CE/MRT-II/2007 dated 23.05.2007 passed by the Commissioner (Appeals) Customs & Central Excise, Meerut-II)

DATE OF HEARING : 08.03.2017
DATE OF DECISION : 08.03.2017

M/s Siddharth Papers Ltd. …. Appellants
M/s Siddheshwari Paper Udyog Ltd. (Rep by Sh BL Narsimhan & H Bajaj, Adv)

VERSUS

CCE, Meerut-II & Vice Versa ..… Respondent
(Rep. by Sh. H.C. Saini, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52322-52325/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The appeal nos. E/1497-1498 of 2007 are filed by the assessee-Appellants against the order-in-appeal no. 15-CE/MRT-II/2007 & 16-CE/MRT-II/2007 dated 22.02.2007 passed by the Commissioner (Appeals) of Central Excise, Meerut-II, where they claimed the reversal of the Cenvat Credit as per Rule 6(4) of the Cenvat Credit Rules, 2002 which was denied by the authorities.

2. The other two appeals nos. E/2297-2298 of 2007 are filed by the Department against the order-in-appeal no. 125-CE/MRT-II/2007 & 124-CE/MRT-II/2007 dated 23.05.2007 passed by the Commissioner (Appeals) of Central Excise, Meerut-II, where the refund claim of the Cenvat Credit was allowed by the authorities. Being aggrieved, both the parties have filed the present appeals.

3. In the appeals, the period in dispute is 30.01.2003 to 23.02.2004 and 28.01.2003 to 27.11.2003 respectively. Since the issue in all the appeals is identical, they are disposed of by this common order for the sake of brevity.

ASSESSEE'S APPEALS

4. The brief facts of the case are that, the assessee-Appellants, during the period under consideration, were engaged in the manufacture of Kraft Paper classifiable under Chapter Sub-Heading No. 4804.90 of the Schedule to the Central Excise Tariff Act, 1985 and enjoyed the exemption under Notification No. 49/2003 dated10.06.2003 vide which the goods were exempted from whole of the duty of excise or additional duty of excise which were manufactured in the new units located in the Uttarakhand for the period of 10 years. The same wad denied. Being aggrieved, the assessee-Appellants/ Department have filed the present appeals.

5. We have heard Shri B.L. Narsimhan and Shri Hemant Bajaj, learned counsels for the assessee-Appellants and H.C. Saini, learned DR for the Department.

6. After hearing both sides and on perusal of record, it appears that an identical issue has come up before this Tribunal in the case of **The General Manager, Century Pulp & Paper vs CCE, Meerut-II,** Final Order No. 50862-50864/2017 dated 15.02.2017, wherein it was held that :

> **"8.** After careful consideration of the facts of the case, the submissions of both the sides and the case laws cited, it appears that the issue is covered by the Hon'ble Uttrakhand High Court's decision in case of *Apco Farm Ltd.* 2015(319) ELT 64/(UK). The Hon'ble Uttrakhand High Court in the said case observes as under:
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> > 13. In our view, Rule 6 is applicable at the stage when inputs are received in the factory of the manufacturer and if the inputs are received for the manufacturer of a product, on which excise duty is payable, then a valid Cenvat credit is available to a reversing a valid Cenvat credit where subsequently the inputs have been used for manufacture of the same product which has exempted from payment of excise duty by means of a subsequent notification. The reason is clear that there is no provision for reversal of a Cenvat credit. This view of ours is fortified by a decision of the Supreme Court in *Dai Ichi Karkaria's case* (supra), wherein the Supreme Court, after considering the scheme of the Cenvat Credit Rules, held:
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> > > "It is clear from these Rules, as we read them, that a manufacturer obtains credit for the Excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of Excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to

> which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."
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> 14. …
> 15. …
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> 21. In the light of the aforesaid, we are of the opinion that CENVAT credit which was validly availed at the time of the receipt of the inputs for the manufacture of the final product, on which excise duty was payable, but subsequently utilized for the manufacture of the same final product which became exempted from payment of excise duty pursuant to a subsequent notification, was not liable to be reversed under Rule 6(1) of the Cenvat Credit Rules, 2002. The question of law is answered accordingly.

8.1 Further, Hon'ble Madras High Court in the case of *Tractor & Farm Equipment Ltd.* (supra) agrees with the above view of Hon'ble Uttrakhand High Court in the case of *Apco Farm Ltd.* (supra). The Hon'ble Madras High Court in the said decision holds that the credit legally taken during relevant time is not liable to be reversed in the circumstances prevalent in the present case. The CESTAT, Delhi in the case of *Shri Krishna Paper Mills & Industries Ltd.* (supra) also supports the stand of the appellant assessee. The CESTAT, Delhi in the said case observes as under:

> 16. Further, our attention has been invited to the decision rendered by the Division Bench of High Court of Karnataka in CEA No. 82 of 2007 [2001 (268) E.L.T. 46 (Kar.)], titled as *Commission of Central Excise v. TAFE Limited (Tractor Division)*, wherein it has been held that once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently. However, if products are purchased subsequent to the said exemption and if any tax is paid on such inputs, as the final product is exempted from payment of tax, the assessee would not be entitled to avail the Cenvat credit on such inputs. But the Cenvat credit availed on such inputs till the date of exemption, vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the same. The Court further held that Revenue cannot take advantage of the notification exempting the final product and claim reversal of Cenvat credit either in

> respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in progress and finished products. Significantly, SLP (Civil) CC 14763/2011, titled as *Commissioner of Central Excise Bangalore v. M/s TAFE Limited, Doddaballapur,* assailing the aforesaid judgment stands dismissed by the Apex Court vide its order dated 16.09.2011.
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> **9.** Considering above discussions and the observations made by various judicial fora quoted above, the appellant assessee will be entitled to the Cenvat credit availed and credited to their Cenvat credit account prior to 03.02.2007, the day when the assessee opted for benefit of the Notification No. 50/2003 dated 10.06.2003."

7. By following our earlier decision (supra), we find no reason to sustain with the impugned order and the same is hereby set aside.

<u>DEPARTMENTAL APPEAL</u>

8. The appeals filed by the Department are related to the refund of the claim which was deposited prior to the passing of the order-in-original, but claimed later. The Commissioner (Appeals) has granted the refund pertaining to the reversal of the Cenvat Credit as per Rule 6(4) of the Cenvat Credit Rules, 2002.

9. As held earlier (supra), that the assessee-Appellants are entitled for the reversal of the Cenvat Credit, we find no merit in the appeals filed by the Department. Hence, both the appeals filed by the Department are dismissed.

10. In the result, both the appeals filed by the assessee-Appellants are allowed and the appeals filed by the Department are dismissed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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