

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal Nos. 586-587 of 2008

(Arising out of Order-in-Appeal No. 266-CE/MRT-II/2007 & 267-CE/MRT-II/2007 dated 19.12.2007 passed by the Commissioner of Customs & Central Excise, Meerut-II)

DATE OF HEARING : 14.03.2017
DATE OF DECISION : 14.03.2017

M/s Sidharth Papers Ltd. Appellants
M/s Siddheshwari Papers Udyog Ltd. (Rep by Sh. Hemant Bajaj, Adv.)

VERSUS

CCE, Meerut-II Appellant
(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. 52605-52606/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

Both the present appeals are filed against the Order-in-Appeal Nos. 266-CE/MRT-II/2007 and 267-CE/MRT-II/2007 both dated 19.12.2007 passed by the Commissioner of Customs & Central Excise, Meerut-II. The period in dispute is 30.01.2003 to 23.2.2004.

2. 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 Tariff sub-heading 4804.90 of the First Schedule to the Central Excise Tariff Act, 1985 and availed the Cenvat Credit on the inputs and capital goods in accordance with the provisions of the Central Credit Rules, 2002. The assessee-Appellants have claimed the benefit of duty exemption w.e.f. 23.02.2004 based on the area vide Notification No. 49/2003-CE & 50/2003-CE dated 10.06.2003, but the same was denied. The Department opined that the assessee-Appellants were liable to reverse the Cenvat Credit on inputs and capital goods lying in stock. To this effect, a show cause notice was issued, but the same was dropped on 17.10.2005. Against it, the Department had filed an appeal before the Commissioner who rejected the claim of the assessee-Appellants vide order dated 22.02.2007. Being aggrieved, the assessee-Appellants have filed the appeal before this Tribunal who has allowed their claim vide order dated 08.03.2017 by setting aside the impugned order. Be that as it may.

When the show cause notice was dropped on 17.10.2005, the assessee-Appellants have filed the refund application which was granted by the adjudicating authority vide its order dated 03.02.2006.

Being aggrieved, the Department has filed an appeal before the Commissioner (Appeals) who has rejected the appeal vide order dated 23.05.2007. Being aggrieved, the Department has filed the appeal before this Tribunal which was rejected vide order dated 08.03.2017.

With this complicated chequered history, a fresh show cause notice was issued on 01.02.2007 for the period under consideration

wherein it was mentioned that the refund was granted erroneously. The same was confirmed by the adjudicating authority as well as by the Commissioner (Appeals). Being aggrieved, the assessee-Appellants have knocked the door of this Tribunal.

3. With this background, we have heard Shri Hemant Bajaj, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Department, and perused the written submissions as well as the material available on record.

4. During the course of hearing, the learned counsel for the assessee-Appellants submits that even on merits the claim of the assessee-Appellants is allowable as per the ratio laid down in the case of **M/s Shree Krishna Paper Mills & Industries Ltd. vs CCE, Jaipur**, Final Order No. 53948/2016 dated 05.10.2016 as well as in the case of **The General Manager, Century Pulp & Paper vs CCE, Meerut-II**, Final Order No. 50862-50864/2017 dated 15.02.2017. In the case of **The General Manager, Century Pulp & Paper** (supra), it was observed 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 Uttarakhand High Court’s decision in case of *Apco Farm Ltd.* 2015(319) ELT 64/(UK). The Hon’ble Uttarakhand High Court in the said case observes as under:

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:

“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.”

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 Uttarakhand 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.

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.”

The learned counsel has also relied upon the ratio of the Larger Bench laid down in the case of **HMT vs CCE, Panchkula**, 2008 (232) ELT 217 (Tri.-LB), wherein the ratio laid down by the Hon’ble Supreme Court in

the case of **Albert David Ltd. vs Commissioner**, 2003 (151) ELT 443 (T), was discussed and finally it was observed that, Cenvat Credit which was validly availed at the time of receipt of the inputs for the manufacture of the final products, 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.

5. In the light of the above discussion, it appears that on merits the claim of the assessee-Appellants was allowed when the show cause notice was dropped vide order dated 17.10.2005 and the CESTAT upheld the same vide order dated 08.03.2017. When it is so, then the subsequent proceedings by issuing fresh notice on 01.02.2007 are not in good taste especially when the refund of Rs. 82,698/- + Rs. 1291/- (interest) was denied which is allowable even on merits, as discussed above.

6. Without saying much, we set aside the impugned orders.

7. In the result, the appeals filed by the assessee-Appellants are allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT