IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –I

Excise Appeal No.E/60273/2013-[DB]
[Arising out of Order-in-Appeal No. 119(VC)CE/JPR-I/2013 dated 14.10.2013 passed by the Commissioner (Appeals-I), Jaipur].

Excise Appeal No.E/52816, 52817/2016-[DB]
[Arising out of Order-in-Appeal No. 162-163(AK)CE/JPR-I/2016 dated 22.08.2016 passed by the Commissioner (Appeals-I), Jaipur].

N. K. Paper Tube Industries …Appellant

Vs.

C.C.E. Jaipur-I … Respondent

Present for the Appellant : Mr. Vijay Kumar. Advocate
Present for the Respondent: Mr. R. K. Mishra, D.R.

Coram: HON'BLE JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing: 12/06/2017
Date of Decision: 15/06/2017

FINAL ORDER NO. 53956-53958 /2017

PER: B. Ravichandran

These three appeals are involving common issue and hence are taken up together. The appellants are engaged in a manufacture of paper tubes and paper cores liable to central excise duty. They are availing cenvat credit on inputs and capital goods and input services and utilized the credit for payment of duty on the final products in terms of Cenvat Credit Rules, 2004. During the course of manufacture of paper tubes/ cores, waste paring and scrap is generated. The appellant were clearing such waste and paring on payment of Central Excise duty. They also use these waste and paring for packing of goods cleared to their customers. The final products cleared to the customers suffer duty on FOR destination basis. The dispute in the present case is the appellants' liability to pay duty on the waste and paring which are used for packing the final product cleared out of factory. The Revenue contended that the waste and paring arising during the course of manufacture has not been captively used by the appellant and as such they are not eligible for exemption under Notification 67/1995-CE dated 16.03.1005. The lower authorities held that the goods which are manufactured in a factory and used within the factory or production in or in relation to manufacture of final product only are exempted in terms of the said notification. The waste and paring generated during the course of manufacture by the appellant has not been used within the factory or production in or in relation to manufacture of the final product. Accordingly, proceedings initiated against the appellant resulted in confirmation of central excise duty of such waste and paring along with imposition of penalties under Rule 25 of Central Excise Rules, 2002.

2. The Ld. Counsel for the appellant submitted that the transaction value for the final product includes all the expenditure including packing used for protecting paper tubes and cores during the course of transportation to the clients. They are clearing final products on FOR destination basis and paying central duty on the transaction value. They are using their own scrap and paring for sage transport which is very much part of value of final product delivered at the customer's destination.

3. Ld. AR reiterated the findings of the lower authorities.

4. We have heard both the sides and perused the appeal records.

5. First of all we note that the waste and paring arising during the manufacture of paper tubes and paper cores itself may not fall under the category of excisable goods. Thus, cannot be called as final products arising out of manufacturing process. In any case, in the present appeal, the lower authority demanded Central Excise duty on such waste and paring disallowing the exemption under Notification 67/1995-CE. The only ground mentioned is that the said scrap and paring is used as a cushioning material in the truck for safety of the final product. As such the said cushioning material are to be considered as part of cost of transportation and to be treated as revenue expenditure. The value of final product does not include such waste of paper used for packing. We find that the reasoning adopted by the impugned order is factually and legally not sustainable. Admittedly, the appellants are paying central excise duty on final products on FOR, at recipient's premises. We have also perused some of the purchase orders submitted by the appellant which support the claim. As such, the appellant are taking the transaction value for payment of central excise duty considering FOR destination at buyers premises, as the place of removal. The freight charges are added in the value for Central Excise purpose. In fact in appellant's own case vide Final Order 728/2009-SM dated 15.07.2009 it is held that appellant is eligible for input service credit on freight and insurance charges paid upto FOR destination. When waste and scrap of paper is used, in whichever manner, for safe transport and delivery of the final product and the final product

suffers duty on FOR destination basis, we find no reason to treat the value of waste and scrap separately for duty purpose by denying the exemption under Notification 67/1995-CE. We find no merit in the impugned order on this issue. Accordingly, we set aside the impugned orders and allow the appeals.

[Pronounced in the open Court on__15.06.2017_]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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