

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76577 of 2016

(Arising out of Order-in-Original No. 03/COMMR/BOL/2016 dated 03.06.2016 passed by Commissioner, Bolpur.)

M/s. Ballavpur Paper Mfg Ltd.

(Regd. Office- "EMTA GLOBE", 5B, NandalalBasu Sarani, Kolkata-700071)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bolpur

(Nanor Chandidas Road, Sian, Bolpur, Dist.-Birbhum (W.B.)-731204)

Respondent

APPEARANCE :

MR. Dipak Chattopadhyay, Authorized Representative for the Appellant
Mr. S. K. Jha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77816/2025

Date of Hearing : 25th November 2025

Date of Decision : 25th November 2025

PER R. MURALIDHAR

The appellant is a manufacturer of low graded kraft paper falling under the Exemption under 4/2008-CE dated 1st March 2008 wherein the first 3500 MT quantity manufactured by them are exempted from payment of Excise Duty. The notification also imposes the condition that no Cenvat Credit should be availed if the duty exemption is availed by the appellant. During the audit, it was found that the appellant had availed Cenvat Credit of Rs. 27,38,096/- during the period 01/04/2009 to 20/05/2009 and 01/04/2010 to 06/05/2010. This was pointed out by the Audit Team when the audit was conducted in 2012. The appellant immediately reversed Rs. 13,67,969/- along with interest of Rs. 4,91,727/- and intimated the Range officials vide their letter BMPL/KOL/Central Excise/123/2012-13 dated 09/05/2012 about the

reversal of Cenvat Credit and payment of the interest. Subsequently, Show Cause Notice came to be issued on 28/04/2014 by invoking the extended period provisions on the ground that the appellant has availed the cenvat credit, he is required to pay the Excise Duty on the manufactured kraft paper on which 10.3% Excise Duty is payable. For quantification of the finished goods, input output ratio was used. The appellant contested the Show Cause Notice on the ground that by mistake they had taken the credit of Rs. 27,38,096/- during the period April to May 2009 and April to May 2010. On being pointed out by the audit team, immediately they reversed Rs. 13,67,969/- along with interest of Rs.4,91,727/- and intimated about the same to the range official on 09/05/2012. They also took the stand that the Show Cause Notice issued on 28/04/2014 is hit by time bar since taking of Cenvat Credit has been reflected in the Monthly Returns for the month May June 2009 and May June 2010 and also reversal of Rs. 13,67,969/- along with interest was known to the Department by 09/05/2012 itself. However, the Adjudicating Authority confirm the demand of Rs. 90,65,416/- along with interest and penalty. Being aggrieved, the appellant is before the Tribunal.

2. The Authorized Representative appointed by the appellant submits that the Department did not give any detail as to how they have arrived at alleged manufacture of goods on which the duty of Rs. 90,65,416/- has been demanded. He further points out to Page 7 of the Appeal Paper Book wherein they have given the details of the Cenvat Credit taken to the extent of Rs.27,38,096/- during April May 2009 and April and May 2010. On being pointed out by Audit about this mistake, the appellant has immediately reversed Rs. 13,67,969/- along with interest of Rs. 4,91,727/-. He further submits that the Show Cause Notice has been issued much later on 28/4/2014 though the Department was aware of the fact that the appellants were taking Cenvat Credit during these months. He submits that the appellant has closed their factory due to financial difficulties and the factory is non-functional for the last two years.

3. In view of these submissions, he prays that appeal may be allowed.

4. The Learned AR submits that the appellant was fully aware that they are not eligible to avail Cenvat Credit. Therefore, the Department had to work out the details of clearance of goods without payment of duty. Since the appellant has not fulfilled the condition given under the Notification No. 4/2008-CX, dated 1st March 2008, the Department had to work out the actual production for the period and demand the Excise Duty on the same. Since the appellant failed to fulfill the condition given in the notification, he justifies the confirm demand.

5. Heard both sides and perused the appeal papers and submissions made.

6. We find that the issue is in a short compass. Admittedly, the appellant is not eligible to take any Cenvat Credit when they are availing the exemption of Excise Duty for the first 3500 MT Kraft Paper cleared by them. However, the audit had found that they have taken the credit during the month April and May 2009 and April and May 2010. The Appellant reversed part of the same along with interest as per the figures discussed above.

7. The reversal of Cenvat Credit and payment of interest has been intimated to the Range Officials vide letter dated BMPL/KOL/Central Excise/123/2012-13 dated 09/05/2012. This shows that the appellant has kept the Department fully aware of reversal made by them. Their initial taking of the Cenvat Credit also has been disclosed by them in their Monthly returns. Therefore, we do not find that the Department has made out any case of suppression on the part of the appellant.

8. The Hon'ble Allahabad High Court on a similar issue has held as under :

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Vs ACCURATE CHEMICAL INDUSTRIES**

5. Admittedly, a show cause notice was issued on 16 August 2007 beyond the prescribed period of one year but the Revenue sought to invoke the extended period of limitation under the proviso to Section 11A(1) of the Act. The Tribunal observed that during the period in question, the assessee had not sold any part of its products to independent buyers and the entire stock was transferred to M/s. Accurate Transformers Limited. Consequently, these clearances were liable to be treated as being made to a related person for its captive use and under Rule 9 read with Rule 8 of the Central Excise Valuation Rules, 2000, the duty was payable on 110%/115% of the cost of production, whereas it was paid on a lower value. On the invocation of the extended period of limitation, the Tribunal held that the assessee had duly filed ER-1 returns on a monthly basis. Under the circulars of the Central Board of Excise and Customs, the Range Officer was required to carry out a detailed scrutiny of the ER-1 returns and if this had been done, the short payment would have been detected. There was no evidence of any collusion between the assessee and the jurisdictional Central Excise Officers. The short payment was detected when an audit team visited the premises and examined the records but this, as the Tribunal held, could have been detected even by the jurisdictional Range Officer much earlier. In the circumstances, it was held that there was no suppression of fact or wilful misstatement on the part of the assessee and no ground was, therefore, available for invoking the extended period of limitation. In addition, the Tribunal observed that in the present case, the situation was revenue neutral since, in the facts of the case, the entire duty paid by the assessee in respect of the clearances of MS tanks and radiators to its transformer unit was available to the transformer unit as Cenvat credit. In other words, the Cenvat credit was available not to a third party buyer of the assessee's manufactured goods but to the assessee itself in its transformer unit. Since the situation was revenue neutral, this was an additional ground which weighed with the Tribunal to hold that the extended period could not be invoked.

6. Having considered the judgment of the Tribunal, we see no reason to interfere with the finding of fact that if a scrutiny had been made by the Range Officer of the ER-1 returns, that would have revealed that the assessee had cleared its MS tanks and radiators to the owning company for the manufacture of transformers. This indicated that there was no fraud, collusion, misstatement or suppression of facts. Besides, since the situation was revenue neutral, no intent to evade the payment of duty could be ascribed to the assessee. Once, there was no intent to evade the payment of duty, the Tribunal was justified in coming to the conclusion that the extended period of limitation under the proviso to Section 11A(1) of the Act, would not be attracted. Hence, no substantial question of law arises in the appeal. It is, accordingly, dismissed.

9. Following the ratio laid down in this case law, we hold that the extended period demand is not sustainable. However, we make it clear that the amount of Rs. 13,67,969/- paid by the appellant voluntarily after being pointed out by the Audit along with the interest of Rs. 4,91,727/- will not be eligible for any refund. Only balance demanded amount is being set aside.

10. The Appeal is thus partly allowed on account of time bar. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja