IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. <u>E/903, 904,905/2007</u>
E/CO-225/07
(Arising out of Order-in-Original No. 7/CEX/2007 dt. 27.2.2007 passed by the Commissioner of Central Excise, Aurangabad)

Nath Palp and Paper Mills Ltd. : **Appellant**
Akash Kagliwal
Vijay Saboo

VS

Commissioner of Central Excise, Aurangabad : **Respondent**

<u>Appearance</u>

None for Appellant

Shri Sanjay Hasija, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 27/11/2017
Date of pronouncement : 21 /03/2018

ORDER NO. A/85728-85730 / 2018

Per : Ramesh Nair

The Brief facts of the case are that the Appellant M/s Nath Pulp & Paper Mills Ltd. are engaged in manufacture of craft paper and coated paper. During the period April' 2001 to June' 2005 they had shown a quantity of 5029.529 Mt of Caustic Soda one of the inputs in their factory and had availed credit of Rs. 98,19,274/- on such quantity. Based upon the investigation and recording of statements they were issued show cause notice alleging that the goods supplied by M/s BASP Chemical products shown to have cleared to the

Appellants were actually consigned to the other factories. The invoices issued by M/s BASP showed the endorsement at the back to this effect. Statement of authorized person of three actual recipient of goods viz. M/s Jagdish Soap Works, Malegaon, M/s Kansal Soap Works, Amravati and Shri Tirumala Gining Factory revealed that the goods were received by them. The transporter M/s Pravin Roadways and M/s Capital Roadlines also stated that though in office copy of LR the destination was shown as place where the Appellant factory is located but the actual place where the goods were to be delivered were given to the truck driver on separate piece of paper or by correction made the place of delivery of consignment was changed. The Managing Director of BASP Shri Mohanlal Agarwal in his statement stated that the Appellant is their debtor and material seems to have been diverted. Shri Akash Kagliwal, Director of Appellant concern in his statement stated that they are ready to reverse the credit of invoices the goods of which were consigned to M/s Jagdish Soap Works, Malegaon, M/s Kansal Soap Works, Amravati and Shri Tirumala Gining Factory. Statement of Shri S.K. Chopra, Vice President was recorded who deposed that during Dec' 04 to May' 05 the total consumption of Caustic Soda comes to 31.86 Mt whereas the purchase quantity was 177 Mt. The receipt recorded in cenvat records and the details of various grades of paper were forwarded to Central Pulp & Research Institute who vide their letter informed the minimum caustic consumption and the said quantity was more or less matching with the quantitive details appearing in private records of Appellant such as MIS Report, Yearly Stock Report or monthly internal report. While the consumption as per private records showed the quantity of consumption as 2542.715 MT the CPRI report showed consumption as 2682.1 whereas the quantity of caustic soda on which credit was availed was 5029.529 MT. The Appellant also reversed credit of Rs. 9,77,227/-. The show cause notice alleged that the Appellant has availed excess credit of Rs. 50,27,335/- fraudulently. The demands were confirmed by the adjudicating authority alongwith penalty against Appellant. Penalties were also imposed upon Shri Akash Kagliwal, director and Shri Vijay Saboo, General Manager, Finance. Hence the present appeals by all three.

2. None appeared for the Appellant. They have sent written submission through their Advocate Shri Abhay Kolte and requested to decide the issue on the merits.

3. Shri Sanjay L. Hasija, ld. Superintendent, AR appearing for the revenue supports the impugned order. He submitted that three parties accepted the receipt of goods which were initially cleared to the Appellant by M/s BASP. That the consignment from M/s BASP to Appellant factory normally took time of 5 to 6 days whereas in 117 entries it took beyond 30 days and even 48 days. That the non eligible credit is in respect of 251 invoices they have reversed credit in case of only 23 cases. They were not able to produce the LRs inspite of initially agreed to submit the same. That in Annexure – II to show cause notice the goods were supplied by other supplier also and it took more than 80 days for the goods to reach their factory which is not possible. Annexure – I shows the actual receipt of material, itemwise consumption and cenvat availed showing receipt of caustic soda. The figures for the year 2002 -03 and 2003 – 04 were not available which was provided by Shri Vijay Saboo, GM (Finance) in his

statement dt. 23.06.2005 alongwith MIS annual statement and were authenticated documents.

4. We find from the Appeal filed by the Appellant that they had sought cross examination of Shri Mohanlal Agarwal, Director of M/s BASP who in his cross examination stated that all work is looked after by his staff; the payment was received from Appellant towards sale of goods in cheque and he did not return any cash to Appellant. Further in cross examination of Ms Vimlesh Bisht of Central Pulp and Paper research Institute she stated that the technical calculation of consumption of caustic soda was based upon data given by the department. The Appellant has contended that merely based on statement of certain persons it cannot be said that no goods were received by them in their factory. That apart from M/s BASP other suppliers also supplied goods to Appellant but no investigation was conducted. That out of cenvat denied on 2479.490 MT only 1435 MT of Caustic Soda was received from M/s BASP and hence there is no ground to deny credit on remaining quantity. That only on the basis of statements of certain persons demand cannot be sustained. The report of CPRI is totally based upon theoritical calculations and thus cannot be adopted for confirmation of demand. That only on the basis of three invoices the demand was confirmed which is illegal. The credit of remaining invoices was forced to be debited. They submitted that there is no evidence to show that they availed fraudulent cenvat credit.

5. We have gone through the records and heard the ld. AR. We find that the revenue had alleged that the Appellant had shown excess

consumption of caustic soda and the same was based upon the ratio of input to output and the opinion of Pulp and Paper Research Institute. Further the revenue during investigation had recovered internal record of the Unit viz. MIS, Yearly stock report and also statements of various persons were recorded. The statement of two transporters M/s Capital Roadlines and M/s Pravin Roadways also supported the fact that the goods were diverted. The Appellant though initially agreed to submit the LRs could not submit the same in case of 251 consignments. The Appellant has contended that the BASP is supplier in case of only some consignments and the remaining goods were supplied by other supplier against which no enquiry was conducted. We find from the statement of Shri S.K. Chopra, Vice President that the MIS contained the data of actual consumption and he was unable to explain the fact that the MIS report showed the consumption of 31.86 MT of Caustic soda during the period December' 04 to May' 05 the quantity of caustic soda purchased and on which cenvat was availed was 177 MT. We find from the adjudication order that the company's officials Shri Pandharinath Neel and Shri Anurag Agarwal stated that the MIS reports are factual Further, Shri Akash Kasgiwal, director in his statement dt. 18.11.2005 confirmed the authenticity of yearly stock report. The adjudicating authority has pointed out instances from such stock report which shows that the quantities of consumption, receipt etc shown in the MIS Reports and yearly stock reports are based upon Appellant's store records. Therefore whatever the quantities of caustic soda has been received were reflected in the MIS reports after stores records. Further the figures of consumption of caustic soda shown in the above reports is matching with the reports and those reported by

CPPRI. We also find that the adjudicating authority has also recorded a fact that the Appellant during investigation did not provide all the copies of LRs or only one sided photocopies so that revenue cannot proceed further for investigation. However be that as it may we find that the MIS reports, yearly stock report, statements of the authorized persons of the Appellant unit as well as statements of transporters clearly show that the Appellants were availing credit without receipt of inputs i.e caustic soda. Even where the revenue could lay their hands on the copies of invoices bearing rubber stamp of other parties in three cases it was found that the goods were diverted to such parties. Thus appreciating the above evidence we find that the Appellant has availed credit without receipt of goods and their consumption and the demand has been confirmed against the Appellant. We therefore dismiss the appeal filed by the Appellant and uphold the impugned orders. The Appeals filed by the other co–appellants are also dismissed for the above reason. Cross-objection stand disposed of.

(Pronounced in court on /03/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.