IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
REGIONAL BENCH - COURT NO. 1

Appeal No. E/89570/2013

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/801-809/13-14 dated 30.08.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Nagpur)

BILT Graphic Paper Products Ltd. **Appellant**
Ballarpur Paper Mill,
Dist. Chandrapur, Maharashtra-442401

Vs.

Commissioner of Central Excise, Nagpur **Respondent**
Telangkhedi Road, Civil Lines, Post Box No.81, Nagpur-440001

WITH

(i) E/89571/2013 (BILT Graphic Paper Products Ltd.); (ii) E/89572/2013 (BILT Graphic Paper Products Ltd.); (iii) E/89573/2013 (BILT Graphic Paper Products Ltd.); (iv) E/89574/2013 (BILT Graphic Paper Products Ltd.); (v) E/89575/2013 (BILT Graphic Paper Products Ltd.); (vi) E/89576/2013 (BILT Graphic Paper Products Ltd.); (vii) E/89577/2013 (BILT Graphic Paper Products Ltd.); (viii) E/89578/2013 (BILT Graphic Paper Products Ltd.)

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/APPL/801-809/13-14 dated 30.08.2013 passed by Commissioner of Central Excise, Customs & Service Tax, Nagpur)

Appearance:

None for appellant
Shri Sanjay Hasija, Authorized Representative for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER NO. **A/85612-85620/2019**

Date of Hearing: 28.02.2019
Date of Decision: 29.03.2019

Per: S.K. MOHANTY

These appeals are directed against the impugned order dated 30.08.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Nagpur.

2. Brief facts of the case are that the appellant is engaged in manufacture of paper and products thereof, falling under Chapter 48 of the schedule to the Central Excise Tariff Act, 1985. The appellant avails Cenvat Credit of Central Excise duty paid on the inputs and capital goods and service tax on the input services. During the disputed period, the appellant had exported the finish product to various customers situated outside India. The goods were exported by the appellant on payment of duty, under claim for rebate in terms of Rule 18 of the Central Excise Rules, 2002 and the notification issued there under. As per the statutory provisions, the appellant had filed the rebate claim applications with the jurisdictional central excise authorities. The Deputy Commissioner of Central Excise had adjudicated the issue and passed the orders in sanctioning the rebate claim in favour of the appellant. However, the sanctioned rebate claims were appropriated under the provisions of Section 11 of the Central Excise Act, 1944 read with Section 142 of the Customs Act, 1962 in respect of outstanding dues confirmed in the earlier adjudication orders. The rebate amount was appropriated by the original authority pursuant to the Circular NO. 967/01/2013-CX. Dated 01.01.2013 issued by CBEC. On appeal, the Learned Commissioner (Appeals) vide the impugned order dated 30.08.2013 has upheld the orders passed by the adjudicating authorities in rejecting all the nine appeals filed by the appellant.

3. The Authorized Representative appearing on behalf of the appellant submitted the written note of submissions, enclosing therewith the order dated 26.10.2016 passed by this Tribunal in

appellant's own case. It has been contended by the appellant that the orders-in-appeal dated 26.06.2007 against which the amount in question was appropriated by the department, were appealed against before the Tribunal, which were disposed of vide above referred order dated 26.10.2016, in partly allowing the appeals in favour of the appellant. Thus, it is stated by the appellant that since the matter arising out of the earlier orders passed by the department were in dispute and the same order were challenged by way of appeal, the provisions of Section 11 of the Act cannot have any application for appropriation of the sanctioned rebate claimed amount.

4. On the other hand, the Learned AR appearing for the respondent has reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. I find from the available records that as per the provisions of Rule 18 *ibid,* the original authority had sanctioned the rebate claim amount in favour of the appellant, holding that there is no dispute about eligibility of the claims as per the notification dated 06.09.2004 issued under Rule 18 *ibid*. However, the original orders had appropriated the sanctioned claim amount against the earlier confirmed demand made vide original orders dated 28.02.2007 passed by the Additional Commissioner of Central Excise. The orders dated 28.02.2007 were appealed against by the appellant before the Commissioner (Appeals), which were disposed of vide order-in-appeals dated 26.06.2007 against the appellant. Feeling aggrieved with the orders dated 26.06.2007, the appellant had preferred appeals before the Tribunal, which were listed as appeal nos. E/1312 and 1313/2007. The said appeals were disposed of by the Tribunal

vide order no. A/94112-94113/16/SMB dated 26.10.2016, in partly allowing the appeals filed by the appellant.

7. On examination of the impugned order dated 30.08.2013, I find that the Learned Commissioner (Appeals) has rejected the appeals filed by the appellant mainly on the ground that the appellant did not produce any stay order from the Tribunal, granting stay of recovery of the adjudged dues. However, on perusal of the case records, I find that the Tribunal vide order dated 07.02.2008, while considering the stay application filed by the appellant in respect of appeal nos. E/1312/07 and E/1313/07, had directed for pre-deposit of the amount of Rs.3,00,000/- and Rs.10,00,000/- respectively within 8 weeks and also recorded that on such compliance, the balance tax as well as penalty shall stand waived and recovery thereof stayed pending these appeals. Pursuant to the order dated 07.02.2008, the appellant had in fact, complied with the terms dictated therein. Further, I also find that on an application filed for extending validity of above stay order, the Tribunal vide order dated 27.06.2011 had allowed the applications for extension of stay till final disposal of the appeals. The appeals pending before the Tribunal were finally disposed of vide order dated 26.10.2016 in partly allowing the appeals filed by the appellant.

8. From the above discussions, it transpire that the appellant had not accepted the liability determined in the adjudication order dated 28.02.2007 and contested the adjudged demand confirmed therein before the appellate forums i.e. the Office of the Commissioner (Appeals) as well as before the Tribunal and finally succeeded before the Tribunal as per the order dated 26.10.2016. Thus, under the facts and the circumstances of the case, it cannot be said that the amount in question confirmed vide order dated 28.02.2007 was due to the Government, which

can be recovered by taking shelter under Section 11 of the Act. Hence, I am of the considered view that the impugned order is devoid of any merit and as such, is liable to be set aside.

9. Accordingly, after setting aside the impugned order, the appeals filed by the appellant are allowed with consequential benefit of rebate claim.

(Order pronounced in the open court on 29/03/2019)

(S.K. Mohanty)
Member (Judicial)

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