

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
MUMBAI**

REGIONAL BENCH - COURT NO. I

Excise Appeal No.798 of 2012

(Arising out of Order-in-Original No.26/2012/C dated 24.04.2012 passed by the
Commissioner of Customs & Central Excise, Nagpur)

M/s Bazargaon Paper & Pulp Pvt. Ltd **Appellant**
Bazargaon Amravati Road, Nagpur-440001

Versus

Commissioner of Central Goods & Service Tax, Palghar
Telangkhedi Road, Civil Lines, Post Box No.81,
Nagpur-440001

Appearance

Shri S. N. Kapoor, Advocate for the Appellant
Mrs. Anuradha Parab, Authorized Representative for the Respondent

WITH

Excise Appeal No. 1441 of 2012

(Arising out of Order-in-Original No.41/2012/C dated 29.05.2012 passed by the
Commissioner of Customs & Central Excise, Nagpur)

Vyanktesh Board Mills Pvt. Ltd. **Appellant**
314/10, Dhanlaxmi Niwas, Khare Town, Near
Dhanwantari Hospital, Dharampeth, Nagpur-440010
Versus

Commissioner of Central Goods & Service Tax, Palghar ... **Respondent**
Telangkhedi Road, Civil Lines, Post Box No.81,
Nagpur-440001

Appearance

None for the Appellant
Mrs. Anuradha Parab, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85830-85831/2022

Date of Hearing: 20.04.2022

Date of Decision: 20.04.2022

Per: S. K. Mohanty

The appellants herein are *inter alia*, engaged in manufacture and
clearance of Paper and Paper Board, falling under Chapter Heading No. 48

of the Schedule to the Central Excise Tariff Act, 1985 attracting Central Excise duty at different rates during the period in dispute. For manufacture of such excisable goods, the appellants got registered themselves with the Central Excise Department. The appellants avail cenvat credit of Central Excise duty paid on the inputs and capital goods and service tax on the input service in terms of the provisions contained in the Cenvat Credit Rules, 2004. The goods manufactured by the appellants were covered by three entries of exemption Notification No. 4/2006-C.E., dated 01.03.2006. The entry at Sl. No. 90 prescribed the concessional rate of duty @ 8% *advalorem*, which was subject to fulfilment of the conditions itemized at Sl. No.10 therein. Another entry at Sl. No.91 prescribed the concessional rate of duty of 12% *advalorem*, which was subject to the condition No. 11. The third entry at Sl. No.93, which was unconditional, also prescribed concessional rate of 12% *advalorem*.

1.1. In the Union Budget for the year 2008-09, the Notification No. 4/2006-C.E., at Sl. No. 90 was amended by Notification No. 4/2008-C.E. dated 01.03.2008 in changing the rate of duty from 8% to 'NIL', retaining all other conditions as per the earlier notification. Corresponding changes were also made in the rate of duties prescribed vide entries at Sl.No.91 & 93, which were changed from 12% *advalorem* to 8% *advalorem*. No changes were made in the columns relating to conditions in both the said entries. By Notification No. 58/2008-C.E., dated 07.12.2008, Notification No. 4/2006-C.E. was amended in order to substitute the rate of duty of 8% by the rate of 4% *advalorem*.

2. During the disputed period, the appellants made clearances of paper on payment of appropriate duty as per the aforementioned notifications, by availing cenvat credit of Central Excise duty paid on the inputs and capital goods received in the factory premises. Payment of Central Excise duty by the appellants during the disputed period was objected to by the Department on the ground that the appellants should have self-assessed at 'NIL' rate of duty under Sl. No.90 of notification dated 01.03.2006, as amended. Accordingly, show cause proceedings were initiated against the appellants, calling upon them to show cause as to why self-assessment of the goods cleared during the period 01.04.2008 to 31.03.2011 should not be assessed at "NIL" rate of duty in terms of

entry at Sl. No. 90 of Notification No. 4/2006-C.E., dated 01.03.2006. Referring to the provisions of Section 5A (1A) of the Central Excise Act, 1944 the SCNs have alleged that as per condition No. 10 of Sl. No.90 of Notification No. 4/2006, the first clearance of 3500 MTs during any financial year was absolutely exempted without any further conditions w.e.f. 01.03.2008. The matter arising out of the show cause notices were adjudicated vide the impugned orders, wherein the proposals made therein were confirmed by the learned Original Authority. Feeling aggrieved with the impugned orders, the appellants have preferred these appeals before the Tribunal.

3. None appeared for the appellant. Heard Mrs. Anuradha Parab learned A.R. for the Revenue and examined the case records.

4. Section 5A of the Central Excise Act, 1944 recognizes two categorizes of exemption notification. The first category being that of an "absolute" exemption, where there was no condition attached to the exemption entry and the other one is a "conditional" exemption, which was subject to fulfilment of the conditions attached to the exemption entry. In the present case, the exemption entry at Sl. No.90 of Notification No. 4/2006-Central Excise was attached with two conditions for availing of the benefit of duty exemption and therefore, it was a conditional exemption and not an absolute exemption, as contemplated by Section 5A(1A) *ibid*. Since, the appellants have opted for payment of duty on clearance of the finished products and availed cenvat credit of Central Excise duty, such option exercised by the appellants cannot be questioned by the department inasmuch as there was no stipulation contained in the subject notification that only condition No. 90 appended thereto had to be followed and not otherwise. Thus, in our considered opinion, the appellants have correctly assessed the duty liability as provided under Sl. No. 93 contained in notification dated 01.03.1998, as amended. Thus, there was no contravention of the Cenvat statute. Further, it is not the case of Revenue that the duty amount collected by the appellants was not deposited with the Government Exchequer. Hence, under such circumstances, the provisions of Section 11D *ibid* cannot be invoked for recovery of the duty amount in question.

5. We find that the issue arising out of the present dispute is no more *res integra*, in view of the order Nos. A/607-611/15/EB dated 05.02.2015, passed by the Tribunal in the case of *Balkrishna Paper Mills Ltd. & Ors. Vs. Commissioner of Central Excise, Thane-I*, reported in 2015-TIOL-1100-CESTAT-MUM. The relevant paragraph in the said order is extracted herein below:

"7. In the result, we hold that the appellant-assesseees cannot be forced to pay duty as per serial No.90 of Notification 4/2006 and they have option to pay the duty under other numbers, viz. 91 and 93. Since we have taken the view that the appellant cannot be forced to pay the duty under nil rate vide serial no.90, the other aspects raised in all the show cause notices as also the Revenue's appeal fall flat".

6. In view of above discussions, we do not find any merits in the impugned order, insofar as the adjudged demands were confirmed on the appellants. Therefore, the impugned orders are set aside and the appeals are allowed in favour of the appellants.

(Operative part of the order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)