

Venus Paper Mills Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-06-1990

Reported in : (1991)LC79Tri(Delhi)

Appellant : Venus Paper Mills Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The point for determination in the above appeal is the eligibility of the appellants to the benefit of the concessional rate of 75% duty under Notification 128/77 dated 18-6-1977 which would be available if the installed capacity of the appellants factory did not exceed 2,000/- metric tonnes per annum.
2. The appellants manufacture various varieties of papers in their factory at Faridabad. On 18-6-1977 they submitted a classification list in which they declared that the installed capacity of their factory was below 2,000 metric tonnes per annum and therefore they claimed 75% concessional duty under Notification 128/77 dated 18-6-1977. During the course of investigation into the correctness of the declaration of installed capacity, certain records and documents obtained from the factory premises revealed actual installed capacity was more than 2,000 metric tonnes per annum.
3. The Central Excise Officers visited the factory on 15-4-1981 and verified and recorded the width of Deckle, steam pressure, speed of M.G. Cylinder and moisture for the finished paper. Based on the data, the production of the paper

machine was calculated and it was found that production worked out to 2468.4 metric tonnes per annum of 330 working days.

4. A show cause notice was issued to the appellants on 28-5-1982 proposing recovery of differential duty short paid on paper cleared from the factory during the period from 18-6-1977 to 31-3-1982, imposition of penalty and confiscation of plant and machinery. The appellants replied on 6-8-1984, stating that the installed capacity never exceeded 2,000 metric tonnes per year and stating that charges against them were based only upon correspondence between the appellants and various Departments for increase of the licensed, capacity to enable them to instal accordingly, which they could not do.

5. The Collector of Central Excise held that, as the appellants had suppressed the real installed capacity, the invocation of the longer period of limitation was justifiable. On merits he held the installed capacity to be in excess of 2,000 metric tonnes per annum and therefore, held that the appellants were not entitled to the benefit of 75% concession under Notification 128/77 dated 18-6-1977 and were only entitled to the concession upto the extent of 60%. The demand for differential duty was confirmed and penalty of Rs. 25 lakhs was also imposed upon the appellants.

6. We have heard Shri V. Lakshmi Kumaran, the learned Advocate for the appellants and Shri S. Chakraborty, the learned DR for the Department.

7. The learned Advocate draws our attention to the certificate of the Institute of Paper Technology, Saharanpur (found at page 63 of paper book) which is to the effect that the installed capacity of the appellants' mills is 1958 Tonnes per year. The certificate gives a report on the installed capacity of the waste paper pulping machine and the installed drying capacity of the paper machine. The installed capacity of the waste paper pulping machine has been found to be 1980 tonnes per year and the installed drying capacity as 2175 tonnes per year. Taking into account 10% finishing loss, the actual installed capacity has been determined as 1958 tonnes per year. The learned counsel refers to Trade Notice dated 10-6-1983 regarding clarification of installed capacity for the purpose of Notification 128/77 dated 18-6-1977 which states that independent organisations like Institute

of Paper Technology, Roorkee University may be able to test and give certificates regarding installed capacity. The Trade Notice also mentions that the notification does not stipulate production of certificate from DGTD for availing of concession available under the notification. Reliance is placed upon the order of this Tribunal in the case of Ellora Paper Mills Limited v. Collector of Central Excise, Nagpur (Order No. 588/87-C dated 29-7-1987) in which the Bench held that one or all of the methods specified in the Trade Notice of 10-6-1983 could be resorted to for the purpose of determination of the installed capacity of a paper mill. The appellants urged that the report referred to above should be accepted as clinching the issue of installed capacity in their favour. Our attention is also drawn to Col.

6 of the AL-4 application dated 8-11-1979 wherein the quantity of excisable goods, which the factory is capable of producing per year is shown as 1800 metric tonnes. The query raised by the Department on 13-2-1980 regarding the difference between the figure of 1800 Metric tonnes found in AL-4 application and the figure of 3600 metric tonnes shown in the previous AL-4 application was answered by the appellants, who submitted that the figure of 3600 metric tonnes was only an estimate whereas the actual production for the preceding year never exceeded 1800 metric tonnes per annum. The classification lists were approved and the AL-4 application for renewal was also approved and in view of this the appellants would submit that there was no suppression of facts on their part and therefore the extended period of limitation would not be applicable.

8. The learned DR submits that the Collector has come to the conclusion on the basis of several documents each of which is relevant for the purpose of computation of installed capacity. In addition to the documents such as the appellants' application to the Ministry of Industry dated 19-5-1971, agreement with Rajendra Paper Mills dated 15-12-1973 for installation of paper mills machinery etc., the Department also relied upon the report of the Departmental Paper Technologist who arrived at the installed capacity of 2468.4 metric tonnes per annum, on the basis of a proper formula which has not been challenged or disputed by the appellants. According to the learned DR the capacity exceeds 2,000 metric tonnes even if the speed of the machine is taken to be 68 metres per minute (which according to the appellants is the speed to be taken into account).

The grammage per square metre is not material for the purpose of the exemption notification.

9. Regarding the report of the Institute of Paper Technology, it is pointed out that the mill was visited on 4-7-1981 at the request of the appellants made on 10-6-1981. However the necessary information required for preparation of the report was supplied only on 22-1-1985 and the report given on 6-2-1985 i.e. after inordinate delay of 3 1/2 years which has not been satisfactorily explained by the appellants.

The department would have it that it was an after thought on the part of the appellants who moved for the certificate only after receiving the show cause notice in May 1982. The information forming the basis of the certificate (referred to in page 63 of the paper book) was also not available before the Collector. In the above circumstances the learned DR submits that the certificate of the Institute of Paper Technology cannot be relied upon and all the documents and certificate of the Departmental Paper Technologist form collateral and corroborative evidence which have been properly taken into account for coming to the conclusion that installed capacity exceeded 2,000 metric tonnes per year.

10. On the question of limitation the stand of the department is that there has been suppression inasmuch as the classification list earlier approved and the application for licence prior to 1979 had mentioned 3600 metric tonnes as the installed capacity and there was no reason to reduce the capacity unless the plant has been changed or machinery had been dismantled which is not so in this regard. The department has held that there has been suppression of facts because, subsequent to the issue of Notification 128/77 by which the installed capacity was the determinative factor for concession instead of production, the assessee started declaring the installed capacity as less than the limits laid down in the Notification. In view of the above, the learned DR contends that the appeal is to be dismissed both on the aspect of limitation and on merits.

11. For the purpose of better appreciation of the dispute involved in this appeal, it would be useful to set out the relevant Notification - i.e. Notification No. 128/77 dated 18-6-1977.

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Govt. of India, in the Ministry of Finance (Department of Revenue and Insurance), No. 45/73-Central Excises, dated the 1st March, 1973, the Central Government hereby exempts paper other than paper boards, cigarette tissue, glassine paper, grease proof paper, coated paper (including waxed paper) and paper of a substance not exceeding 25 grammes per square metre, and containing not less than fifty per cent by weight of pulp made from bagasse, jute stalks, cereal straw or waste paper manufactured and cleared from a paper mill of the type described in the Table below, from so much of the duty of excise leviable thereon as is specified in the corresponding entry in column (3) of the said Table :

S. Description of paper mill	Extent of exemption
1. Paper mill whose annual installed capacity in respect of all varieties of paper and paper boards does not exceed 2000 tonnes	Seventy-five per cent of the duty leviable
2. Paper mill whose annual installed capacity in respect of all varieties of paper and paper boards exceeds 2000 tonnes but does not exceed 5000 tonnes	Sixty per cent of the duty leviable
3. Paper mill whose annual installed capacity in respect of all varieties of paper and paper boards exceeds 5000 tonnes	Fifty per cent of the duty leviable

5000 tonnes but does not exceed 10,000 tonnes----- Provided that

the paper mill (i) does not have a plant attached thereto for making bamboo or wood pulp and (ii) manufactures paper out of pulp brought by it or made by it from any raw material other than bamboo or wood." 12. The department has relied upon several documents and records of the assessee for holding that the assessee was not entitled to 75% duty concession under the notification. Initially the appellant was a Private Limited Company which had applied to the D.G.T.D. for registration for manufacture of paper with an installed capacity of 2000 metric tonnes but on the Company being converted into Public Limited Company on 30-4-1971, the Company applied on 19-5-1971 to the Ministry of Industrial Development & Internal Trade for industries, licence for manufacture of paper with a proposed installed capacity of 3600 metric tonnes per annum. The Director of Industries, Chandigarh sought clarification as to why the Industrial Licence for 3600 MT

capacity was required when the appellants were already registered with the D.G.T.D. The/capacity of the Factory is mentioned as 3600 metric tonnes in the U.O. note dated 17-11-1973 by the D.G.T.D. to the Ministry of Industrial Development. The appellants mentioned the same figure in their letter dated 28-12-1973 to the Ministry of Industrial Development, referring to their application for Industrial Licence. In their letter dated 18-4-1974 to the D.G.T.D. the appellants have mentioned the installed capacity as 3000 metric tonnes per annum. The capacity of 3600 metric tonnes per annum is mentioned in the letter of D.G.T.D. dated 23-7-1974 to the Director of Industries, Chandigarh.

13. The appellants also entered into an agreement with M/s. Rajendra Paper Mills Pvt. Limited on 15-12-1973 for installation of paper mill machinery wherein it was stated that the annual capacity of the mill is 3600 metric tonnes. The installation charges were paid according to the agreement and there is no averment that the agreement was not carried out. The application dated 21-12-1973 to the Delhi Stock Exchange Association Limited for enlistment of securities mentions the installed capacity of the Mills as 3600 metric tonnes. This is the capacity indicated in letter dated 13-2-1974 to the Regional Manager, Canara Bank, enclosed memorandum dated 4-2-1974, and letter of 27-6-1980 to Canara Bank for Bank facilities. In their letter of 28-7-1980 to Canara Bank it was stated that the average production during the month of June 1979 was 8 tonnes per day which works out to 2640 metric tonnes per annum (i.e. 8 tonnes x 330 working days). The letter to Canara Bank dated 29-8-1980 shows the production for the year ending 31-3-1980 as 2119 metric tonnes and the production figures also indicated that the installed capacity was more than 3350 metric tonnes per year based on actual production during July 1980 which similarly far exceeds 2000 M.T. Installed capacity is shown as 3000 metric tonnes in the letter dated 19-3-1979 addressed to the Chief Conservator of Forest Chandigarh, for allocation of EUCALYPTUS for the mills. In the application dated 20-12-1978 to the Senior District Industries Officer, Faridabad the appellants requested allotment of 6000 litre of K-Oil per month as they were having a paper plant with production capacity of 10 Tonnes per day which works out to 3330 MT per annum.

The letter dated 20-8-1980 to the Managing Director, Haryana Industrial Development Corporation (Page 118 of the paper book) mentions the installed capacity as 10 metric tonnes per day and actual production as 7 metric tonnes per day. The application dated 19-9-1980 (Pages 119 to 124 of the paper book) for term loan of Rs. 60 lakhs mentions the installed capacity as 10 metric tonnes per day.

14. The monthly production report for the period Jan. to Apr. 1976 mentions the production capacity as 300 Tonnes per month which works out to 3600 MT per year. The capacity of the mill is shown is 10 metric tonnes per day in the letter of 19-10-1974 addressed to S.F. India Ltd. (Pages 130 to 133 of the paper book).

15. There is a plethora of evidence to establish that the installed capacity of the appellants' Mill exceeded 2000 metric tonnes per year, and this documentary evidence cannot be lightly brushed aside.

16. Coming to their report of the Institute of Paper Technology Roorkee dated 6-2-1985 relied upon by the appellants it reads as follows :- At the request of M/s. Venus Paper Mills Limited, Faridabad, we visited the mill on 4th July, 1981 to make an assessment of the installed capacity of the plant.

The mill is basically using waste paper for the production of M.G. wrapping grade papers. The only equipment installed for waste paper pulping were two hydra-pulpers with a capacity of about 250 kg/charge. The installed capacity of waste paper pulping section is given below. The capacity calculations have been made on the basis of the norms finalised in the meeting held in 15-2-1982. Accordingly the number of working days in a year are taken as 330.

WASTE PAPER PULPING CAPACITY

Number of Hydrapulpers	- 2
Capacity of one Hydrapulper	- 250 kg/charge.
Processing time of the charge	- 1/2 Hrs.
Number of charges/Hydrapulper/day	- 16
Waste paper yield	- 75%
Capacity of Hydrapulpers	- 250 x 2 x 16 x 0.75

1000 = 6.0 Tonnes/day

Based on 330 days of production in a year, the installed capacity of waste paper pulping street = The mill is having a Yankee Paper Machine. The specifications of the paper machine are as follows :

Wire Part - Conventional Fourdrinier Wire length - 21 m
Paper Part - Plain Press - one M.G. dryer - ...

As per the information furnished by the party, the machine was fabricated by the company with some imported components. The M.G. Cylinder is damaged and in having such a surface which seems difficult to be repaired. This severely limits the evaporation on the M.G. drying cylinder. It was observed that the main sections of the machine were not properly balanced. The installed capacity calculations of the paper machine are given below.

The samples of the web before and after dryers were collected for the moisture determination. Moisture in the web before dryer - 68% Moisture in the web after dryer - 7% Total quantity of water evaporated kg. per kg. of finished paper - 68.7 = 100.68 Evaporation drying rate on M.G. cylinder = 5.5 --- hr ft² Surface area of the M.G. cylinder = 3.14 x 1.8 x 3.0 = 16,956 m² Therefore installed drying capacity of the machine = 26.85 x 16,956 x 24 = 1.906 x 1000 = 5.732 Tonnes per day. Taking 15% more capacity for the hood installed on the machine, the drying capacity of the machine = 5.732 x 1.15 = 6.5918 Tonnes per day Based on 330 working days in a year, the installed drying capacity = 6.5918 x 330 = 2175 Tonnes/year Taking 10% finishing losses the annual installed capacity = 2175 x 0.9 = 1958 Tonnes. Based on the above calculations, the installed capacity of the paper machine can be taken as 1958 Tonnes/Year.

The report of the Paper Technologist (Supdt. of Central Excise) on the factual production is as follows :-

A. FACTUAL PRODUCTION OF THE PAPER MACHINE BASED ON INSTANTANEOUS DATA AS VERIFIED : Production = Grammage x Deckle x Speed x Time (g/m²) (meters) (Meters (24 hrs.) per. Mint.)

B. PRODUCTION AT MAXIMUM SPEED LOWEST GRAMMAGE & MAXIMUM DECKLE (PAPER WIDTH):- As the drying condition of the paper at 42 gr/m² running at maximum speed of 100 metres/min. was not satisfactory, it is assumed that at lower gram-mage say, 38 g/m² , the quite satisfactory. Even in trade practice, so the speed of the machine increases, the grammage goes low in view of limited drying capacity of the M.G. Cylinder and economy. Taking the extreme condition, the following is the capacity production worked out: Production : Grammage x Speed x Deckle x Time 38 x 100 x 1.82 x 24 x 60 The raw-material for paper manufacture in the mills is waste paper.

The pulping of waste paper is carried out in Hydrapulpers which are two in numbers, with a capacity of 250 kgs. over-day waste paper in each Hydrapulper. In each Hydrapulper, one hour is reported to complete the pulping process i.e. pulp made out of waste paper ready for paper manufacture. The yield, in terms of paper, based on raw-material is reported as 77%.ready in one day = 23 x 2 = 46Capacity of the plant (Pulp mill) = 46 x 250 = 11.5 tonnes per dayProduction of pulp for 330 daysNumber of dryer = 1 M.G. Cylinder} Source:Diameter = 3050 m.m. or 10' } Drawing No.Width = 2250 mm or 7.38' } VPM/400/77Contact of wrap of paper M.G. Dryer = 75% of total drying } assemblyMaximum width of = 72" (max workable width of suction box.)Average steam pressure The instantaneous moisture entering in the dryer as verified was about 60% but assuming Average value.Average Moisture in the paper entering dryer = 65%Average Moisture in the paper leaving dryer = 5%NOW PRODUCTION DRYING CAPACITY Ref. Pulp Paper manufac-p = R x (sic) x w x Hr./Per day x efficiency ure Vol-III DryingLb/tonnes.

capacity calculations "by R.G. MACDONALDR = Production drying rate, Lb/(hr) (ft²)SRp = Rw Where Rw = Evaporation drying rate Lb/Hr/Ft WF Wf There are standard charts showing value of Rw at a particular steam pressure and corresponding temperature for a particular grade of paper. These charts have been developed on standard equations devised for ideal working condition.

In case of writing-printing paper the equation is : Ref. Pulp and paper manufacture Vol.-III "Calculations Pw = 0.08 x OT -17.5 where T is of dryer performance"temperature at corresponding steam pressure.

by J.N. Stephenson.In this case, Average Steam Pressure = 45 psigCorresponding Temp.

= 295F (from steam table)Rw = 0.0820 x 295 - 17.8 This value is little more than graph value which is augmented by higher rate of heat transfer in case of M.G. Cylinder due to minimisation of two resistances falling in the path of heat transfer, namely: (ii) Less change of formation of condensate layer around the inner peripheri of the cylinder due to slow speed of M.G. Cylinder i.e.

less rimming effect. Where D = Diameter of M.G. Cylinder in inches N is number of dryer
Production drying capacity = $3.73 \times 2.6 \times 6 \times 72 \times 24 \times 0.95 \times 2000$ The drying capacity has been reported as increased by 10% by incorporation of drying hood, which has a linear bearings on production increase. So, increase in production due to drying hood = $2640 \times 0.10 = 264$ tonnes per annum
Net production drying capacity is $2640 \times 264 = 2904$ tonnes p.a.

Sd/-...

17. On a detailed reading and analysis of the 2 reports, it is found that the factual production of the paper machine based on instantaneous data as verified has been calculated in the report of the Department dated 28-4-81 while no such calculation has been made by the I.P.T. Roorkee. By letter dated 10-6-81, the appellants requested the I.P.T. to furnish a report on the installed capacity of the mills. The mills were visited on 4-7-81 and the I.P.T. called for certain particulars which were supplied only as late as on 22-1-85 and the report was given on 6-2-85. No explanation has been offered for such a delay. It was open to the appellants to have challenged the report of the Deptt. by asking for cross-examination of the Department's paper technologist or leading in the I.P.T. Roorkee's paper technologist's evidence in their support or calling for a further detailed report either from the I.P.T. Roorkee or from any other acknowledged Paper Technologist. However, they have not chosen to do so. No convincing arguments have been put forth for rejection of the Department's report which clinches the issue. The department has carried out several tests to arrive at the factual production and no grounds have been made out for rejection of the Department's report. On the contrary, the report is well reasoned and elaborate and is corroborated by the collateral evidence mentioned earlier. In this view of the matter, we accept the report of the Deptt.

that the installed capacity of the appellants' mills exceeds 2000 MT p.a. The appellants are therefore not entitled to the benefit of concessional rate of 75% duty under Notfn. 128/77 dt. 18-6-77.

18. On the aspect of limitation, it is the contention of the Department that the appellants wilfully mis-declared the quantity of excisable goods, which the factory

was capable of producing, in their AL-4 application dated 26-11-1979 for renewal of their licence for the year 1980-83 as 1800 MT against 3600 MT installed capacity mentioned in the AL-4 applications of 20-5-1974, 16-11-1975 and 29-11-1976. The Department also alleged mis-declaration from the fact that the classification lists filed by the appellants for the period 1973 to 1977 contained 3 categories - (3) The higher rate for the subsequent 2000 MT, which indicated that the estimate of production was upto 4000 MT.¹⁹ We find that in this case the RT-12s and classification lists filed by the appellants have been approved by the Department. The estimated production in the AL-4 application dated 20-5-1974, 16-11-1975 and 29-11-1976 was shown as 3600 MT and in the AL-4 application dated 26-11-1979 the estimate was shown as 1800 MT. Before renewing the L-4 licence for the years 1980 to 1983 the department wrote to the appellants seeking clarification regarding the installed capacity. This is seen from the letter of the Supdt. of Central Excise dated 13-2-1980 which reads as follows :- "Office of the Superintendent of Central Excise-III Faridabad Please refer to your letter No. VPM/126 dated 26-7-1979 thereunder the L-4 licence was submitted to this office for renewal.

On scrutiny of your AL-4 it has been found that you have shown at Sl. 6, 1800 M. tonnes as the quantity of excisable goods which the factory is capable of producing while it was declared as 3600 M. tonnes in your previous AL-4 submitted for renewal of licence. You are therefore requested to please submit your L-4 licence (enclosed herewith) with your amended AL-4 immediately.

Further more your attention is invited to the Central Excise Notification No. 244/79 dated 18-8-1979 wherein your L-4 is required to show the installed capacity of your plant and as such you are requested to furnish proof in support of your claim regarding your aforesaid capacity.

20. The appellants replied to this letter on 10-7-1980 stating that the quantity declared in the AL-4 application filed earlier was only an estimated quantity whereas the actual production never exceeded 1800 MT per annum. The endorsement dated 11-7-1980 on the AL-4 application dated 26-11-1979 reads as "AL-4 renewed for 1980-83 subject to confirmation of installed capacity".

21. We have already reached the conclusion that the installed capacity of the mills in fact exceeded 2000 M.T. per annum and hence the benefit of concessional rate of 75% duty under Notification 128/77 cannot be extended to the appellants. This being the factual position, we cannot hold that there was absence of suppression. The appellants have mis-declared the installed capacity of the mills in their letter of 10-7-1980, based on which the AL-4 licence was renewed for 1980-83 subject to confirmation of installed capacity. We also note that the classification list as earlier approved and also the application for licence prior to 1979, when the Notification underwent a change, had mentioned 3600 M.T. as installed capacity and even the classification lists for the period 1973 to 1977 contained 3 categories. From the above, it appears that subsequent to the issue of the Notification which altered the basis for concessional rate of duty from production to installed capacity the appellants mis-declared the installed capacity which amounts to a suppression of facts, entitling the Dept.

to invoke the extended period of limitation. The appellants' plea on limitation is therefore rejected.

22. Regarding the issue of computation of the differential duty, we remand the matter to the Collector for the purpose of determining the amount, after deduction of the amount of duty actually paid from the sale price, in accordance with the provisions of Section 4(4)(d)(ii) of the CESA, 1944.

23. In view of the fact that we have upheld the demand of differential duty for the entire period from 18-6-1977 to 31-3-1982, the levy of penalty upon the appellants is sustainable. However having regard to the facts and circumstances of the case we are of the view that the penalty imposed is disproportionate to the amount of duty demanded.

Hence we reduce the penalty to Rs. 4 lacs which works out to approximately 25% of the duty demanded.

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