CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 10577 of 2020

[Arising out of Order-in-Original/Appeal No CCESA-SRT-APPEAL-PS-660-2019-20 dated 19.03.2020 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

ALKEM LABORATORIES LIMITED .... **Appellant**
Plot No. 167/2, Mahatma Gandhi Udyog Nagar,
Dabhel, Daman, Gujarat-396210

VERSUS

Commissioner of Central Excise & ST, Daman .... **Respondent**
3rd Floor, Adarsh Dham Building, Vapi-Daman Road,
Vapi, Opp.Vapi Town Police Station, Gujarat-396191

APPEARANCE :

Shri Mahesh Raichandani & Shri Anshul Jain, Advocates for the Appellant
Shri Ghanshyam Soni, Joint Commissioner (AR) for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)

DATE OF HEARING / DECISION : 28.04.2022

FINAL ORDER NO. A/10404/2022

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is entitled to Cenvat credit in respect of inputs and packing material used in the manufacture of medicament and the same is tested for trial and quality purpose and were destroyed thereafter.

2. Shri Mahesh Raichandani learned Counsel appearing on behalf of the appellant submits that the testing of medicaments is a mandatory requirement under Drugs and Cosmetics Act. Such quality tests and trials were undertaken to ascertain level of quality for sale for human consumption. Therefore, the process of quality testing is an integral part of manufacturing of final product. Therefore the inputs and packing materials

used in the manufacture of medicament which is used for testing purpose, is admissible for Cenvat credit. He placed reliance on the following judgments:-

(a) 2010 (2256) ELT 56 (BOM) - Tata Engineering and Locomotives Co. Limited vs. CCE, Pune

(b) 2018 (363) ELT 1104 - Tetra Pak India Pvt Ltd. Vs. CCE, Pune

(c) 2010 (262) ELT 974 - Sudarshan Chemicals Inds Ltd vs. CCE, Pune

(d) 2019 (20) GSTL 39 (Mad.) Ganesan Builders Ltd. vs. Commissioner of Service Tax, Chennai

(e) 2017 (3) GSTL 176 (Tri. - Mumbai) Thyssenkrupp Electrical Steel (I) P. Ltd. vs. CCE, Nashik

(e) 2018 (363) ELT 1107 (Tri. - Mumbai) - Bombay Dyeing and Manufacturing Limited vs. CCE (A) Raigad.

3. Shri Ghanshyam Soni, learned Joint Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He relied upon the judgment of Hon'ble Madras High Court in the case of *CCE Madras vs. Union Carbide India Limited – 2001 (129) ELT 40 (Mad.)*.

4. I have considered the submissions made by both the sides and perused the record. I find that there is no dispute in the fact that packaging/ raw materials on which the appellant has claimed Cenvat credit has been used in the process of manufacturing of medicaments for trial and testing purpose under the Drugs and Cosmetics Act, which was subsequently destroyed. On the basis of such tests only the marketability of the product is ascertained. Accordingly, the process of testing of the medicaments is an integral part which is used in relation to manufacturer of the final product. Accordingly, the raw/ packaging material which is used in manufacturing and which goes for testing are indeed the inputs which are used in or in relation

of manufacturing of final products. I find that the judgments cited by the appellant supports their case.

5. As regards the judgment relied upon by Shri Soni, learned Authorised Representative, on going through the same, I find that in the said case the fact is that the raw material got destroyed even before the manufacturing of final product. Therefore the facts of that case are entirely different from the facts of present case. Accordingly, the judgment of *CCE Madras vs. Union Carbide India Limited* (supra) is clearly distinguished.

6. As per my above discussion and findings, I am of the considered view that appellant is entitled for the credit on the input and packaging material used for testing products. Hence the impugned order is not sustainable accordingly the same is set-aside and the appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

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