CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 2962 of 2012

(Arising out of Order-in-Appeal No. 269/2012-CE dated 20.09.2012 passed by Commissioner of Central Excise (Appeals-I), Bangalore)

Micro Print & Pack
No. 27/2 & 27/4C, Block B B-197,
Bommasandra Industrial Area,
Yarandahalli, Bangalore
Karnataka- 560058 ………. **Appellant**

VERSUS

Commissioner of Central Excise,
Bangalore – I, Commissionerate
Central Excise Building, Bangalore,
Karnataka - 560001 ……. **Respondent**

Appearance:
Shri Pradyumna G.H, Advocate for the Appellant
Shri Rajesh Shastry, Authorised Representative for the Respondent

Coram:
Hon'ble P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20315 /2025

Date of Hearing: 17.09.2024

Date of Decision: 13.03.2025

Per: P.A. Augustian

The issue in the present appeal is whether the benefit of SSI exemption can be denied to the Appellant on the ground that the Appellant had manufactured packing material for branded products.

2. The brief facts are the Appellant is engaged in manufacturing of articles of paper falling under Chapter 48 of first schedule to Central Excise Tariff Act, 1985 and are availing the benefit of SSI under Notification No. 8/2003-CE dated 01.03.2003. The appellants are

manufacturing tags, printed sheets, boxes, carry bags, catalogues, bands etc., bearing the brand names of other parties. Alleging that appellant had contravened the conditions prescribed under Notification No. 8/2003-CE dated 01.03.2003 during the period April 2006 to August 2009, manufactured and cleared the said branded goods on which Central excise duty of Rs. 7,47,740/- was not paid, proceedings were initiated. Thereafter, Adjudication authority as per the Order-in-Original dated 31.05.2011 held that demand for the period from April 2006 to August 2008, the goods manufactured and cleared by the Appellant amounts to manufacture of branded goods and hence the Appellant were liable to pay Central Excise duty. However, for the period from September 2008 to August 2009, in view of the insertion of clause (e) "where the specified goods are in the nature of packing materials, namely printed cartons of paper or paper board, metal containers, high density polyethylene woven sacks, adhesive tapes, stickers, pilfer proof caps, crown corks, metal labels" in para 4 of Notification No. 8/2003-CE dated 01.03.2003 vide amendment Notification No. 47/2008-CE dated 01.09.2008, Adjudication authority held that Appellant is eligible to avail the benefit of exemption under Notification No. 8/2003 dated 01.03.2003 and for the same reason, demand to that extent was set aside. However, allegations of suppression of facts were justified and the demand for the larger period was invoked and penalty was also imposed. Aggrieved by said order, on appeal Commissioner (Appeals) rejected the appeal. Aggrieved by the impugned order, present appeal is filed before this Tribunal.

3. When the appeal came up for hearing, the Learned Counsel for the Appellant draws our attention to Notification No.24/2009-CE(NT)

dated 21.10.2009 issued under Section 11C of Central Excise Act, 1944 wherein the goods namely; printed cartons of paper or paper board, metal containers, high density polyethylene woven sacks, adhesive tapes, stickers, pilfer proof caps, crown corks, metal labels were granted exemption for the period 01.10.1987 to 31.08.2008, hence the demand of duty for the period April, 2006 to August, 2008 is not sustainable.

4. The Learned Counsel further submits that the issue is also squarely covered by the judgment of this Tribunal in the matter of **M/s Kajal Print and Pack (Pvt) Ltd. Vs. CC, Mumbai-V (2019 (369) E.L.T 1210 (Tri. Mumbai) wherein it is held that:-**

> *6. It would appear from the amendment to the notification, and the subsequent exemption under Section 11C of Central Excise Act, 1944, that legislative approval for exclusion from exemption did not intend to cover 'packaging' manufacturers in the small-scale sector who, by the very nature of their activity, were, undoubtedly, an ancillary but, undoubtedly, in the small-scale sector. The exclusion from exemption is applicable to goods which bear a brand name and the exclusion from coverage under these exclusion is limited to certain categories. That the packaging industry in the small-scale sector would generate its business by manufacture of packages bearing brand names is acknowledged by the amending exclusion in the notification of the Central Government. That 'catch cover' is a packaging is not in dispute. There is no definition of 'printed cartons of paper or paperboard' either in the notification or elsewhere. Accordingly, this description should conform to such as is commonly understood, and intended, in the industry. We, therefore, find no reason to distinguish 'printed cartons of paper or paperboard' from 'catch cover' and to deny eligibility to exemption.*

5. As regards invoking the extended period of limitation, the Learned Counsel submits that the Appellant has not committed any fraud, collusion or suppression of facts or willful statement for evasion of duty. Facts being so, invoking the extended period of limitation is also

unsustainable. The Learned Counsel draws our attention to Para 3.4 of the CBEC Circular No. 1053/2-2017-CX dated 10.03.2017 where it is clarified that;

> *"...3.4 Extended period in disputed areas of interpretation: There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty..."*

6. The Learned Authorized Representative (AR) reiterated the finding in the impugned order and submits that the Adjudication authority has considered the Notification issued from time to time and only thereafter partially confirmed the demand made against the Appellant. The Learned AR also draws our attention to the relevant notifications and submits that the exemption contained in the Notification shall not apply to the specified goods, where a manufacturer affixes the specified goods with a brand name or trade name, registered or not of another person, who is not eligible for the grant of exemption under this Notification. The Learned AR also draws our attention to the judgment in the matter of **C. Ex. Trichy Vs. M/s Rukmani Packwell Traders 2004 (165) E.L.T 481 (SC),** wherein it is held that;

"8. Reliance was also placed upon the Circular No. 52/52/94-CX., dated 1-9-1994 wherein the Board has clarified that if names or marks which are not owned by any particular person are used then the use of such names or marks would not disentitle those persons from the benefit of the Notification. In our view this Circular has no relevance at all to the facts of this case. In this case admittedly there is an owner of the registered Trade Mark. once the Respondents use that Trademark or a part thereof they get covered by Clause 4."

7. Further the Learned AR submits that for the period from April 2006 to August 2008 the goods manufactured and cleared by the Appellant amount to manufacture of branded goods and hence the Appellant are liable to pay Central Excise duty.

8. Heard both sides and perused the records.

9. We find that the show cause notice was issued for the period from April 2006 to August 2009. The adjudicating authority has held that demand for the period September 2008 to August 2009 is unsustainable, considering the amendment to Notification No.8/2003-CE dated 01.03.2003 vide Notification No.47/200-CE dated 01.09.2008. As per the above SSI Notification as amended, packing materials namely printed cartons of paper or paper board, metal containers, high density polyethylene woven sacks, adhesive tapes, stickers, pilfer proof caps, crown corks, metal labels, bearing brand name/trade name of another are exempted. Since the Adjudication authority has held that the goods manufactured by the Appellant are falling under the above category, there is no reason or justification to deny the very same benefit as per the Notification No. 24/2009-CE(NT) dated 21.10.2009, for the period from 01.04.2006 to 31.08.2008.

10. Further we find strong force in the contention raised by the Appellant that the Adjudication authority has invoked the extended period of limitation without considering the facts and circumstances in the present matter. There is no allegation of suppression of facts and demand was confirmed only on the ground that appellant has not paid excise duty for the relevant period. Moreover, longer period cannot be invoked when issue involved is interpretation of the complex provision of law as held in the matter of **M/s NRC Ltd Vs. CCE, Thane-I (2007 (5) STR 308 (Tri. Mumbai).** Further the Hon'ble Supreme Court in the matter of **M/s Cosmic Dye Chemicals Vs. CCE, Mumbai (1995 (6) SCC 117**) held that intention to evade duty must be proved for invoking the proviso to Section 11A for extended period of limitation.

11. Facts being so, the entire demand is unsustainable on merit as well as on limitation. Hence the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 13.03.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Sasidhar