CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

E/ROA/20450/2017 in E/680/2004-DB

Appeal(s) Involved:

E/680/2004-DB

[Arising out of Order-in-Appeal No. 161/2004-CE dated 24/03/2004 passed by the Commissioner of Central Excise, Mangalore]

Murkumbi Industries Pvt. Ltd. Sy. No.9, Halaga, Belgaum – 590 001 Karnataka	**Appellant(s)**

Versus

Commissioner of Central Excise, **Customs and Service Tax,** **Belgaum** No. 71, Club Road, Central Excise Building, Belgaum – 590 001 Karnataka	**Respondent(s)**

Appearance:

Shri J.N. Somaiya Advocate 328, D-10, Royal Plaza, Dabholkar Corner, Kolhapur – 416 001	For the Appellant
Dr. Ezhilmathi, Joint Commissioner (AR)	For the Respondent

Date of Hearing: 08/02/2018
Date of Decision: 08/02/2018

CORAM:

HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20128 / 2018

Per: V. PADMANABHAN

After hearing both the parties, we recall our earlier Final Order Nos. 20582 - 20585/2017 dated 28.04.2017 where the appeals were dismissed for non-prosecution. The said order is recalled for the reason mentioned in the application. ROA is allowed and appeal is restored to its original number.

2. The present appeal is filed against the Order-in-Appeal No. 161/2004-CE dated 24/03/2004. The appellant is engaged in the manufacture of excisable goods with the brand name "NEEMACTIN". This brand name belongs to M/s. Wockhardt Ltd., Mumbai. The Department denied the benefit of SSI exemption No. 08/2001 dated 01.03.2001 since the goods manufactured by the appellants were cleared bearing the brand name of others. Aggrieved by the decision, the present appeal has been filed.

3. In this connection, we heard Shri J.N. Somaiya, the learned counsel appearing for the appellant. He submitted that the factory of the appellant was situated in the rural area to which the SSI exemption benefit will be available even when the goods are manufactured and cleared with the brand name of others as per Clause 4(c) of the Notification 8/2001. Learned DR reiterated the findings of the lower authorities.

4. After going through the record of the appeal, we find that the plea which has been raised before us was never made before the lower authorities and hence, they never had an occasion to consider this plea of the appellant. Consequently, we set aside the impugned order and remand the matter to the original authority to examine this aspect and then pass *Denovo* orders. The appellant may be given an effective opportunity to produce all necessary documents to substantiate their claim. In the result, appeal is allowed by way of remand.

(Order Dictated in Open Court on **08/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(JUSTICE (DR.) SATISH CHANDRA)
PRESIDENT

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