CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISON BENCH
COURT NO.1

Appel No. E/586-589/2012, E/55960-55962/2014, E/53204,54500,54501/2015, E/60562/2018

[Arising out of the Order-in-Appeal No. OIA- 366-367/CE/APPL/CHD-II/2011 dated 15/12/2011 passed by the CCE (Appeals), Chandigarh, Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-284-314-13-14 dated 13.06.2014 passed by the CCE (Appeals), Chandigarh, Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-886-888-14-15 dated 22/01/2015 passed by the CCE (Appeals), Chandigarh, [Arising out of the Order-in-Appeal No. JNK-EXCUS-000-APP-268-278-14-15 dated 28.08.2015 passed by the CCE (Appeals), Chandigarh, Arising out of the Order-in-Appeal No. JNK-EXCUS-000/APP-268to278-14-15 dated 28.08.2015 passed by the CCE (Appeals), Chanadigarh]

Date of Hearing/Decision: 29.08.2018

For Approval & signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

CCE, Jammu **Revenue**

Vs.

Hyderabad Chemicals Ltd. **Assessee**

And

Hyderabad Chemicals ltd. **Assessee**

Vs.

CCE, Jammu **Revenue**

Appearance

Shri. Harvinder Singh, AR- for the Revenue
Shri. B.L. Narshima & Gautam Chug, Advocates- for the Assessees

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

FINAL ORDER NO: 62713-62723/2018

Per Ashok Jindal:

Both sides are in appeal against the impugned orders.

2. The facts of the case are that the assessee located in the state of Jammu and Kashmir and availing the benefit of exemption Notification No. 56/2002-CE dated 14.11.2002. The assessee is manufacture of insecticides, pesticides and selling the goods in finished condition after packing. The assessee is paying duty in terms of Section 4(A) of the Central Excise Act, 1944, being packed goods. The Revenue is of the view that the assessee is not required to fix MRP on the said goods, as the packets are less than 10 gms, therefore, no MRP is required to be affixed, therefore, duty is to be paid under section 4(A) of the Act. In these set of facts, various show cause notices were issued to the assessee for excess refund claimed by them by paying more duty in terms of Section 4(A) of the Act. In some cases, proceedings were dropped against the assessee but in some cases, the refund claims were directed to be recovered for excess duty paid by the assessee. Against those orders, both sides are in appeal.

3. Heard the parties and considered the submissions.

4. Considering the fact that the said issue came up before this Tribunal in the case of ***M/s Krishi Rasayan Exports Pvt. Ltd. In appeal no. E/529/2011-EX,*** wherein, ***Final Order No. 62271/2018 dated 19.03.2018***, the issue has decided in favour of the assessee. Therefore, it

has been prayed by the ld. Ld. Counsel the refund claims filed by the assessee are to be sanctioned.

5. We have gone through the decision of this Tribunal in the case of Krishi Rasayan Exports Pvt. Ltd. (Supra) wherein the facts of the case are as under:

> *" 2. The facts of the case are that the appellant is manufacturer of pesticides and insecticides of less than 10 gms/10 ml. The appellant's unit is located in the State of Jammu & Kashmir. The said packages were packed in bigger boxes of 15-20 packs and on the packages the appellant is putting MRP printed and paying duty in terms of Section 4A after availing abatement of Central Excise duty. The Revenue entertained a view that the appellant is required to assess the goods under Section 4 and has availed excess refund which is illegal. Therefore, a show cause notice was issued by invoking the extended period of limitation. The matter was adjudicated and the impugned order was passed by confirming the demand under section 11A(1) of the Central Excise Act, 1944 and by imposing penalty under section 11AC of the Act. Against this order, the appellant is before us."*

And this Tribunal observed as under;

> *"6. The facts of the case are not in dispute that the appellant packed pouches of insecticides of less than or 10 gms/10 ml and these pouches but in bigger pack on which MRP is printed. MRP is printed on the pouches and these goods are made for retail sale and the appellant is required to affix MRP in terms of Standards of Weights and Measures (Packaged Commodities), Rules, 1977. These facts are not disputed. In an similar set of facts in the case of Radha Tobacco Company (supra), this Tribunal has observed as under:-*
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> > *7. The consequent point for consideration is whether the multi-piece packs from the factory are intended for retail sale as claimed by the appellant and whether such goods intended for retail sale are required to be printed with Maximum Retail Price under the Standards of Weights & Measures (Packaged Commodities) Rules, 1977.*
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> > *8. It is amply clear that a pre-condition for assessment under Section 4A of Central Excise Act, 1944 is the mandate to clear packaged goods with Maximum Retail Price printed on them. However, the Central Excise Act, 1944 being a taxation statute, cannot mandate the printing of Maximum Retail Price on the package cleared from the factory. That mandate must emanate from elsewhere, i.e., the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 notified under Standards of Weights & Measures Act, 1976. Assuredly, assessment under Section 4A of Central Excise Act, 1944 is a consequence of packaging and the mandated declaration.*

> > *9. The said Rules have been framed to protect consumers who are rendered unable to ascertain the nature and content of the goods secured by packaging. As the consumer is the beneficiary, the enforcement of this mandate is effected only at the point of retail sale Commercial consideration may require more than one intermediary between the factory of production and point of retail sale. Packaging is as much a property of the manufacturer as the produce itself. That self interest is sufficient to enforce the prescription when the package is cleared from the factory. The intention for sale in retail is demonstrated only when the goods so packaged are deployed at the point of retail sale. The mandate under the Rule is not enforceable at any point before that. The intention is, therefore, in the mind of the producer and is evidenced by the printing of the prescribed details on the package. There can be no other test of intent.*
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> > *10. It is quite possible that the retail distributor may opt to sell the individual pouches of chewing tobacco after breaking open of the polythene package. That is a commercial decision at the retail sale point, which has no bearing on the assessment at the time of clearance. That the printing of Maximum Retail Price on the multi-piece pack suffices to express the intent of the producers of the goods and owner brand to market the multi-pack is apparent from the Rules.*
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> *7. Considering the fact that the appellant have made packages for retail sale, they are legally bound to affix MRP of the said goods. In the circumstances, the appellant is required to discharge duty in terms of Section 4A of the Act. Therefore, the appellant has correctly discharged the duty liability under section 4A of the Act."*

And it was held that the appellant has correctly discharged their duty liability under Section 4(A) of the Act.

5. In view of the above, we hold that the assessee has discharged their duty under Section 4(A) of the Act and the same is correct. In these circumstances, we do not find any merit in the appeals filed by the Revenue, therefore, the same are dismissed. In the case of appeals filed by the assessee, the impugned orders are set aside and the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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