CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Appeal No. E/61408 Of 2018

[Arising out of OIA-CHD-EXCUS-001-APP-118-2018-19 dated 14.06.2018 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh-i]

Morepen Laboratories Limited : Appellant (s)
Masulkhana, Parwanoo, Solan, HP

Vs

CCE, Chandigarh-i : Respondent (s)
Central Revenue Building, Sec-17-C,
Chandigarh

Appeal No. E/3544 Of 2012

[Arising out of OIA No. 154-155/CE/Chd-I/2012 dated 31.08.2012 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh-i]

Morepen Laboratories Limited : Appellant (s)
Masulkhana, Parwanoo, Solan, HP

Vs

CCE, Chandigarh-i : Respondent (s)
Central Revenue Building, Sec-17-C,
Chandigarh

AND

Appeal No. E/3545-3547 Of 2012, E/60245/2018

[Arising out of OIA No. 154-155/CE/Chd-I/2012 dated 31.08.2012 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh-I and OIA-CHD-EXCUS-001-APP-111-17-18 dated 30/11/2017 passed by the Commissioner (Appeals) of Customs & Central Excise, Chandigarh-I]

Morepen Laboratories Limited : Appellant (s)
Masulkhana, Parwanoo, Solan, HP

Vs

CCE, Chandigarh-i : Respondent (s)
Central Revenue Building, Sec-17-C,
Chandigarh

APPEARANCE:
Shri Amarender Singh, Advocate for the Appellant
Shri Vijay Gupta, Authorised Representative for the Respondent and
Shri Rajeev Gupta, AR
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CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE Mr. C L MAHAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: 05.09.2019

FINAL ORDER No.60808-60813/2019

Per : Mr. Ashok Jindal

The appellants are in appeal against the impugned orders.

2. The facts of the case are that the appellant manufactures bulk drugs and during manufacture, various waste solvents emerge, which are in solvent form of varying strengths. The officers of DGCEI visited the appellant's units under the belief that the appellant was clearing dutiable waste solvents without payment of duty therefore, various show cause notices were issued and demand was raised for the period 09.06.2004 to 31.07.2008, December, 2008 to September, 2010,9.6.2004 to 31.3.2009, April, 2009 to March, 2010, April, 2010 to December, 2010 and January, 2011 to June, 2015. The matters were adjudicated, the demands of duty were confirmed. Against the said orders, the appellant is before us.

3. Ld. Counsel for the appellant submits that in their case for earlier period, the matter came up before this Tribunal and this Tribunal remanded back to the adjudicating authority to decide the issue of excisability of product in question i.e. waste solvent during manufacture of bulk drugs. In remand proceedings, vide Order-in-Original No.05/CE/Comm/SML/2018-19 dt.20.11.2018, the adjudicating authority has held that various solvent cleared by the appellant are not liable to central excise duty and the said order has

been reviewed and accepted by the Committee. Therefore, the issue is no more *res integra* and the impugned orders to be set aside.

4. On the other hand, Ld. AR submits that in the earlier remand order of this Tribunal, the period was 1.8.2001 to 8.6.2004 and the appeals in hand, the period is post and prior to 10.5.2008 i.e. the date on which the definition of excisable goods under section 2(d) of Central Excise Act, 1944 was amended by inserting explanation. Therefore, the said order-in-original dated 20.11.2018 have no bearing to this case. He has relied on the decision of this Tribunal in the case of Saertex India Pvt.Ltd.- 2018 (12) GSTL 158 (Tri.-Mum.) to say that trimming and end-cuts are excisable and the appellant is liable to pay duty.

5. In rebuttal of the argument advanced by the Ld.AR, Ld. Counsel for the appellant submits that in the case of Orchid Chemicals & Pharmaceuticals vs. CCE-2017 (356) ELT 287 (Tri.Mum), this Tribunal had an occasion to examine the excisablity of the product and held that the same is not excisable. Further, for the period 1.7.2015 to 30.06.2017, the Commissioner (Appeals) vide Order-in-Appeal No.CHD-EXCUS-001-APP-123-19-20 dt.18.8.2019 has dropped the proceedings holding that the waste solvent is not excisable.

6. Heard the parties and considered the submissions.

7. On careful consideration of the submissions made by both sides, we find that the issue has been examined by the Commissioner in the remand proceedings for the earlier period and it was held that the waste solvent are not excisable goods and the said order has been

accepted by the Revenue. Moreover, the Commissioner (Appeals) for the subsequent period has also held the same view.

8. Further, the case law relied upon by the Ld.AR is not applicable to the facts this case as in the case of Saertex India Pvt.Ltd. (supra) the products are trimming and end-cuts whereas in the instant case, the product is waste solvent.

9. Further, in the case of Orchid Chemicals & Pharmaceuticals (supra), this Tribunal examined the product in question wherein this Tribunal has observed:-

> **"7.**The issue needs to be decided in the case in hand is whether the mixture of solvents, which is sold by the appellant, is excisable products or not for the period prior and post 15-6-2008. It is undisputed that the mixture of solvents, which is cleared by the appellant, is mixture solvents obtained after considerable reuse, which cannot be reused by the appellant in their factory premises and the said solvents are cleared on the invoices from the factory premises of the appellant. It is also undisputed that the appellant was discharging duty liability on this mixture/spent solvents prior to September 2006 but subsequently did not discharge the central excise duty by relying upon the judgment of the Tribunal in the case of *Aurobindo Pharma Pvt. Ltd.*
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> **8.**On perusal of the records, we find that the goods which are cleared by the appellant are mixture of solvents which have been reused in the factory premises over a period of time for the manufacturing of final products i.e. bulk drugs. It is also not disputed by the Revenue in the impugned orders that the solvents are repeatedly used after purification within the factory premises and they get mixed up with various impurities and at a stage when they cannot be reused, they are cleared by the assessee for a consideration. In short, clearances of the mixed solvent, which is done from the factory premises, is the residue, which gets retained after the manufacturing of final products by repeated use of the solvents during the course of manufacturing of final products. The appellant's claim that these goods are not excisable is supported by the judgment of the Tribunal in the case of *CCE, Hyderabad* v. *Aurobindo Pharma Ltd.* reported in 2010 (249) E.L.T. 415 (wherein I authored the judgment). The relevant paragraphs in the said judgment of *Aurobindo Pharma Ltd.* need to be reproduced:-
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> > The assessees are engaged in the "3.2 manufacture of Bulk Drugs and Bulk Drugs Intermediates. They use solvents such as Methanol, Toluene etc., in the manufacture of the said products and availing Modvat credit on the above said inputs/solvents. In the manufacturing process of the said finished goods, solvents such as Methanol, Toluene etc., are recovered and the same are re-used in

the subsequent batches for four to five times till they become non-usable in the process. Then the assessees are clearing the recovered/distilled/spent solvents which contain 80 to 90% of Methanol, Toluene etc., by declaring them as "industrial waste solvents".

We have considered the submissions made at 6. length by both sides and perused the records. We find that in the case of the respondent i.e. *Aurobindo Pharma Ltd.* (supra), this Bench has held that the issue in favour of respondent and hence the issue is no more *res integra*. Further, it is also seen that in the case of *Sreepathi Pharmaceuticals Ltd.* (supra) & *Natco Pharma Ltd.* (supra), the issue was the very same as is before us i.e., spent solvent and excisability thereof. We find that the learned Commissioner (Appeals) reliance upon the decided case laws of the very same Bench to hold in favour of respondent seems to be correct. We also note that the learned Commissioner (Appeals) has followed the judgment given by the Tribunal."

From the above reproduced paragraphs, it can be seen that the issue involved in the case in hand and in the case of *Aurobindo Pharma Ltd.* is the same. At least up to 10-5-2008, the question of excisability of the mixed solvent that arises during the course of manufacturing of bulk drugs, does not arise as it does not get covered in the provisions of Section 2(f) of the Central Excise Act, 1944. This judgment of the Tribunal having been affirmed by the Hon'ble High Court and maintained by the Hon'ble Supreme Court, the ratio would apply in the case in hand and the demands raised prior to 10-5-2008 needs to be set aside.

9.As regards the demands raised by the Revenue post 10-5-2008 for which duty provisions of Section 2(d) has been invoked, needs to be addressed now. The said provisions of Section 2(d) defines excisable goods and states that for the purposes of this sub-section, goods includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable. In the cases in hand, from Appeal Nos. 86521 to 86526/13, 85825/14 and 85851/14, the period involved is post 10-5-2008. Even with the enactment of provisions of Section 2(d) of the Central Excise Act, 1944, the demand raised on the appellant does not get fastened for the simple reason that the show cause notice does not invoke the provisions of Section 2(d) of the Central Excise Act, 1944. All the show cause notices are alleging that the process that is carried out for the purification of the mixed solvents amounts to manufacture as per the provisions of Section 2(f) of the Central Excise Act, 1944. Since the said proposition is already decided by the Tribunal in the case of *Aurobindo Pharma Ltd.* and followed in the case of *Lee Pharma Pvt Ltd.* (supra), the question of demanding any duty from the appellant on this invocation of the provisions of Section 2(f) does not arise.

10. Be that as it may, the Apex Court was considering the provisions of Section 2(d) of the Central Excise Act read with Section 2(f) of the Central Excise Act in the case of *DSCL Sugar Ltd.* (supra). The ratio of the said judgment would apply in the case in hand squarely. We respectfully reproduce the relevant paragraphs:-

However, show cause notices were issued to "5. the respondents herein stating that Bagasse would be subject to duty under the Central Excise Act, 1944, as "other products". These show cause notices were issued to the respondents in terms of the provision contained in Rule 6(3) of the Cenvat Credit Rules, 2004 demanding various amounts. The said show cause notices were challenged by the respondents filing writ petitions in the High Court of Allahabad. The High Court has allowed these writ petitions holding that Bagasse being a waste and not a manufactured product, no duty is payable thereupon. For arriving at this conclusion, the High Court also have relied upon the judgment of this Court in *Balrampur Chini Mills Ltd.* in C.A. No. 2791 of 2005 decided on 21-7-2010 [2015 (320) E.L.T. A258 (S.C.)].

The aforesaid judgment was pronounced by 6. this Court related to the period before 2008. In the year 2008 there was an amendment in Section 2(d) as well as in Section 2(f) of the Act which defines 'excisable goods' and 'manufacture' respectively. Section 2(d) with the said amendment reads as under :

"Section 2(d) - "excisable goods" means goods specified in [the First Schedule and the Second Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;

Explanation. - For the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and sold for a consideration and such goods shall be deemed to be marketable."

As per the aforesaid explanation, "goods" 7. would now include any article, material or substance capable of being bought or sold for consideration and as such goods shall be deemed to be marketable. Thus, it introduce the deeming fiction by which certain kind of goods are treated as marketable and thus excisable.

However, before the aforesaid fiction is to 8. be applied, it is necessary that the process should fall within the definition of "manufacture" as contained in Section 2(f) of the Act. The relevant portion of amended Section 2(f) reads as under :

Section 2(f) - "manufacture" includes any process -

incidental or ancillary to the completion of (i) a manufactured product;

which is specified in relation to any goods (ii) in the section or Chapter notes of [the First Schedule] to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to [manufacture; or]

which in relation to the goods specified in (iii) the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer;

and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production

> or manufacture of excisable goods, but also any person who engages in their production of manufacture on his own account;"
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> The Revenue sought to cover the case under 9. sub-clause (ii) as per which the process which is satisfied in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 would amount to 'manufacture'. Here again, fiction is created by including those goods as amounting to manufacture in respect of which process is specified in the Section or Chapter notes of the First Schedule."
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> It can be seen from the above reproduced ratio that the Revenue has sought to invoke the same provisions of Section 2(d) to fasten the liability on the appellant, even by applying the provisions of Section 2(d) of the Central Excise Act, 1944. In our view, the impugned orders are unsustainable as per the authoritative judicial pronouncements as reproduced herein above."

10. Therefore, we hold that the issue is no more res integra and waste solvent emerged during the course of manufacture is not excisable goods. Therefore, no duty is payable by the appellant.

11. In the result, we set aside the impugned orders and allow the appeals filed by the appellant.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

(C. L. Mahar)
Member (Technical)

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