IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/79/2011

(Arising out of Order-in-Appeal. No. 77/2010 (M-IV) dated 19.11.2010 passed by the Commissioner of Central Excise, (Appeals), Chennai).

M/s. Ajinomoto India Pvt. Ltd. : Appellant

Vs.

CCE, Chennai-IV : Respondent

Appearance

Shri P.C. Anand, Consultant
for the Appellant

Shri K.P. Muralidharan, AC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **03.04.2018**

FINAL ORDER No**.** **41075/2018**

Per Bench

The brief facts of the case are that the appellants are the holders of Central Excise Registration for the manufacture of "Monosodium Glutamate", which is being sold in the trade name of "Ajinomoto" falling under CTH 29224200 of the Central Excise Tariff Act, 1985. For the purpose of manufacture the assessees imported monosodium glutamate and after certain processing in the factory, it is sold in the local market on payment of duty. The assessee had cleared certain quantities of monosodium glutamate to an EOU under the provisions of AR3 procedures together with the CT3 certificate during the disputed period February-October,2008. The department was of the view that such clearances to 100% EOU without payment of duty on the basis of CT3 Certificates are not eligible for the exemption notification No. 22/2003 dated 01.03.2003. Hence, SCN dated 21.11.2008 was issued proposing to demand duty, interest and imposition of penalty. Adjudication of SCN resulted in confirmation of demand of Rs. 2,94,904/- along with interest and imposition of equal penalty under Rule 15(1) of CCR, 2004 read with Rule 25 of CER, 2002. In appeal, the Commissioner (Appeals) upheld the order of the adjudicating authority. Aggrieved, appellant is before this Tribunal.

2.1 On behalf of the appellant Ld. Consultant, Shri P.C. Anand submitted that the adjudicating authority grossly erred in considering that the imported items were cleared 'as such'. The adjudicating authority ought to have called for the excise documents/records and verified whether the goods in question were sent as such or, whether some operations have undertaken within the factory. It is a fact that the basic inputs Monosodium Glutamate has been imported from the parent companies. Imported goods falling under Chapter Heading 2922 4220 is brought from the port to the factory and the same is repacked into different sizes. The imported goods come in a 25 Kg. pack and the same would be repacked into smaller packs of 2.5 gms, 5 gms, 50 gms, 250 gms, or repacked again into 20 or 25 Kg. packs for other bulk customers. It is necessary for the company to comply with the various details as required under other statutes such as "Prevention of Food Adulteration Act, 1954", "Standards of Weights and Measures Act, 1976", read with the rules thereunder. Consequently, it is necessary and reiterated that a 25 Kg. pack as obtained from the foreign supplier has to be processed to a limited extent, and again repacked into another 20 or 25 Kg. pack giving details as necessary and as required under the above enactments. The batch number together with other details required such as the life of the product and the stringent measure to be adopted under the PFA Act, would have to be adhered to. Further, after repacking the packing would have to be in terms of the Standards of Weights and Measures Act, 1976, read with Rules thereunder. Without considering any of these aspects, the adjudicating authority has taken a very queer and narrow stand that the appellants have not undertaken any process in their factory.

2.2 Ld. Counsel has taken cognizance of Chapter Notes of Chapter 29 and submitted that Chapter 29 refers to any goods falling under the said chapter, when subjected to any process such as labelling or relabeling of containers, or repacking from bulk pack to retail pack, or the adoption for any other treatment to render the product marketable shall amount to deemed process of manufacture under Section 2 (f). Thus, the process taken up by the appellants at their factory is one of manufacture. That, even the 25 Kg. packing for bulk customers is repacked after the above mentioned process and never sold directly from the imported stock. Hence, when the Chapter Note specifies the manufacturing activity (deemed manufacture), the adjudicating authority cannot take the stand that with reference to despatches to an EOU, the then exemption notification No. 22/2003 would not be applicable.

3. Ld. AR, Shri K.P. Muralidharan, AC, reiterated the findings in the impugned order. He submitted that the finding of the authorities below is correct in as much as the appellant is not entitled to avail the exemption under Notification No. 22/2003 dated 01.03.2003 including Cenvat credit on the inputs cleared 'as such' to 100% EOUs. The assessees have violated Rule 20 of CER, 2002 and Rule 3(5) of CCR, 2004 since they have failed to pay the duty on the clearances to EOU under AR-3 certificate.

4. Heard both sides.

5. The short issue involved in this matter to be decided is whether repacking of imported goods supplied to 100% EOU would amount to manufacture by appellant so as to be eligible for the exemption under Notification No. 22/2003 dated

01.03.2003 for the clearance of their inputs to 100% EOU without payment of duty on the basis of CT3 and AR-3 certificates or otherwise. The Ld. Counsel submits that the appellant undertakes repacking of the goods and in terms of Chapter Heading 29 which specifies that repacking would amount to manufacture, the appellant would be eligible for benefit of notification. On perusal of records we do not find any discussion in this regard. The Ld. Counsel argues that the appellant would be able to produce evidence to establish this fact if an opportunity is granted to them. It is his submission that the said contention was not considered by the authorities below. Taking note of these submissions, we are of the view that it is deem fit to remand the matter to the adjudicating authority for denovo consideration leaving all issues open.

7. In the result, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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