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

E/73 – 74/2012

[Arising out of Orders-in-Appeal No. 42 & 47/2011 – CEX dated 30.11.2011 passed by the Commissioner of Central Excise (Appeals-I), Salem).

M/s. ECOF Industries Pvt. Ltd. Appellant

Versus

CCE & ST, Salem Respondent

Appearance:

Shri R. Parthasarathy, Consultant
For the Appellant

Shri R. Subramaniyam, AC (AR)
For the Respondent

CORAM :

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing/Decision: 16.03.2018

FINAL ORDER No. 41435-41436/2018

Per: Archana Wadhwa

As per the facts on record, the appellant is engaged in the manufacture of detergent powder falling under Chapter 34 of the Central Excise Act. They were receiving detergent powder in bulk on payment of duty which was being packed in various pouches of various weights. Along with the detergent powder, the appellants were also packing free detergent cakes inside the pack of 900 gms of detergent powder having a total MRP rate of Rs. 30/-. The said goods were being cleared under the brand name "Kite".

2. In as much as the appellant was availing Cenvat credit of duty paid on the detergent cakes, Revenue entertained a view that such credit was not admissible to the appellant as the same cannot be considered to be an input for the manufacture of detergent powder. Accordingly, after initiating proceedings, demand of Rs.2,51,436/- for the period October 2009 to March 2010, and Rs. 1,59,338/- for the period from April 2010 to August 2010 were confirmed by denying them Cenvat credit of duty availed in respect of detergent cakes. The orders passed by the original authority stand confirmed by the Commissioner (Appeals). Hence, these appeals.

3.1 After hearing both sides duly represented by Shri R. Parthasarathy, Consultant and Shri R. Subramaniyam, AC (AR), we note that an identical issue came before the Tribunal in the case of CCE, Chennai Vs. Dynavista Industries (P) Ltd., wherein a detergent cake was being supplied in the pack of detergent powder cleared under the same brand name "Kite" vide Final Order No. 40426/2015 dated 17.03.2015, it was held as under:-

> "5. I have carefully examined the facts and the grounds of appeal by the Revenue. Revenue's only ground is that free supply of detergent soap which was packed inside the detergent powder and therefore respondents are not eligible to avail cenvat credit on the duty paid on the detergent soap as it is not an input. I find that the lower appellate authority in his order has clearly discussed the issue at length and relied this Tribunal's decision in the case of Lotte India Corporation Vs CCE Pondicherry (supra). In the present case, Revenue has not disputed the fact that respondent has discharged central excise duty on the detergent powder packed in 500 grams and also not disputed the fact that respondents have discharged duty under Section 4A under M.R.P. price. As seen from the file, respondents had packed free supply of one detergent soap (valueRs.5 per piece) inside the washing powder of 500 gms. and correctly declared the net weight of the combi-pack of 575 gms. and discharged duty on the detergent powder. The respondents are rightly covered under Section 2(f) (3) of Central Excise Act. The lower authority has rightly relied on decision of this Bench of the Tribunal in the case of Lotte India Corporation Ltd. (supra). Further, I find that the Hon'ble High Court in the case of CCE Vs Prime

Healthcare Products - 2011 (272) ELT 54 (Guj.) wherein the Hon'ble Gujarat considered this Tribunal's decision passed in the case of Lotte India Corporation (supra) and dismissed the Revenue's appeal and upheld the Tribunal's order. The relevant paragraphs of the Hon'ble Gujarat High Court judgement (supra) are reproduced as under:-

> "10. We have examined this reasoning of the Tribunal in view of the provisions contained in Cenvat Credit Rules, 2004. Rule 3(1) of the Rules says that a manufacturer or producer of final product or a provider of taxable service shall be allowed to take credit of items mentioned therein. The proviso further states that the cenvat credit shall be allowed to be taken of the amount equal to central excise duty paid on any input or capital goods received in the factory of manufacture of final product. The word 'input' is defined in Rule 2(k) which also includes accessories of the final products cleared along with final product. There is no dispute about the fact that on toothbrush, excise duty has been paid. The toothbrush is put in the packet along with the tooth paste and no extra amount is recovered from the consumer on the toothbrush. Considering the definition given in the Rules of 'input' and the provisions contained in Rule 3, we are of the view that the Tribunal is justified in taking the view that the credit is admissible in the case of the respondent-assessee.
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> 11. The view taken by the Tribunal is further supported by the provisions contained in Section 2(f) of the Central Excise Act, 1944 which defines the word 'manufacture'. It includes any process in relation to the goods specified in the Third Schedule, which includes packing or re-packing of such goods in a unit container. In the Third Schedule, at Serial No. 38, under Heading - Sub-Heading of Tariff Item, Entry No. 3306, is in respect of tooth paste. Hence, the process of packing and re-packing the input, that is, toothbrush and tooth paste in a unit container would fall within the ambit of 'manufacture' as defined under the Act and as such, the assessee would be entitled to claim cenvat credit on such input.
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> 12. In the above view of the matter, we are of the view that no question of law, much less any substantial question of law arises out of the impugned order of the Tribunal. Hence, we dismiss this appeal."

6. Though Revenue has relied on Tribunal's decision (supra) and Hon'ble High Court of Punjab & Haryana in the case of Perfetti Van Melle India Pvt. Ltd. Vs UOI (supra), I find that above decision is not applicable to the facts of the present case as the said decision was rendered by the Hon'ble High Court during the period prior to Section 2(f) amendment. Therefore, the same is not applicable to the facts of the present case as the present case relates to the period after the amendment of Section 2(f). Therefore, I am of the considered view that the ratio of the Hon'ble Gujarat High Court judgement

> (supra) is rightly applicable to the present case. Therefore, I do not find any infirmity in the orders of the Lower Appellate Authority since he has rightly relied on this Tribunal's decision which has been upheld by the Hon'ble Gujarat High Court in the judgement cited supra. Accordingly, the impugned order is upheld and revenue's appeal is rejected."

3.2 It is seen that the issue involved in the present case is identical to the issue involved in the above referred decision of the Tribunal where in it stands held that the assesse is entitled to the Cenvat credit of duty paid on the detergent cake soap, which is packed in the pouch of the detergent powder, which is being cleared on payment of duty on MRP basis. As such, by following the said decision, we set aside the impugned orders and allow the appeals with consequential relief to the appellants.

(Operative part of the Order pronounced in the open court on 16.03.2018)

(V.PADMANABHAN) **Member (Technical)**	**(ARCHANA WADHWA)** **Member (Judicial)**

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