IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Excise Appeal No. 40778 of 2014

(Arising out of Order-in-Appeal No.11 & 12/2014 dt.17.01.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Seshasayee Paper and Boards Ltd. **Appellant**
Pallipalayam, Cauvery RS
Namakkal District
Erode- 638 007.

Vs.

Commissioner of GST & CE **Respondent**
No.1, Foulkes Compound, Anaimedu
Salem 636 001.

WITH
Excise Appeal No. 41266 of 2014

(Arising out of Order-in-Appeal No.11 & 12/2014 dt.17.01.2014 passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Seshasayee Paper and Boards Ltd. **Appellant**
Pallipalayam, Cauvery RS
Namakkal District
Erode- 638 007.

Vs.

Commissioner of GST & CE **Respondent**
No.1, Foulkes Compound, Anaimedu
Salem 636 001.

APPEARANCE:

Shri R. Sai Prasanth, Advocate for the Appellant
Shri Vikas Jhajharia, AC (AR) for the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Anjani Kumar, Member (Technical)

Final Order No. 40047-40048 / 2021

Date of Hearing: 12.01.2021
Date of Decision: 12.01.2021

PER : Sulekha Beevi C.S

Brief facts of the case are as follows :

The appellants are engaged in manufacture of paper and paper boards falling under Chapter 48 of CETA, 1985. During the process of manufacture, intermediary called "Black Liquor" is produced. The appellants subjected this black liquor to a treatment for recovering caustic soda. As a result of this process, lime sludge was obtained as residue. This lime sludge was disposed of by the appellants by way of sale. The department was of the view that appellant is liable to pay excise duty on the lime sludge as it is classifiable under CETH 3825. Show cause notices were issued proposing to demand the duty along with interest and also imposing penalties. After due process of law, the original authority confirmed the demand along with interest. On appeal, the Commissioner (Appeals) upheld the same. Hence these appeals.

2. On behalf of the appellants, Ld.Counsel Shri R.Sai Prashanth appeared and argued the matter. He submitted that in Appeal E/40778/2014 the period involved is from December 2005 to September 2006 and in Appeal E/41266/2014, the period involved is from October 2006 to June 2007. The issue whether lime sludge is subjected to excise duty has been decided in the appellant's own case for the period May 2005 to November 2005 as reported in *Seshasayee Paper and Boards Ltd. Vs CCE Salem - 2017 (358) ELT*

943 (Tri.-Chennai). In the said case, the Tribunal placed reliance on the decision of the Hon'ble Apex Court in *UOI Vs DSCL Sugar Ltd.* - 2015 (322) ELT 769 (SC) wherein the Hon'ble Apex Court held that sludge generated in the course of manufacture is not excisable as it is not "manufactured" by the assessee. It was also observed by the Tribunal that amendment to Section 2(d) of the Central Excise Act, 1944 was introduced w.e.f. 10.05.2008 so as to bring the goods which are capable of being marketed also to be excisable. Since the period involved in these cases is prior to 10.05.2008, the amended provision of Section 2(d) will not be applicable. Further it is submitted that though the Revenue has filed appeal against the said decision in the appellant's own case before the Hon'ble Supreme Court, the same was disposed as reported in *Commissioner Vs Seshasayee Paper & Boards Ltd. - 2017 (356) ELT A135 (SC).*

3. Ld. A.R Shri Vikas Jhajharia reiterated the findings in the impugned order.

4. The issue is with regard to demand of excise duty on lime sludge sold by the appellants. It is not the case of the department that the appellant has manufactured lime sludge. It is only generated in the process of manufacture of paper. The decision in the appellant's own case, as relied by them, has held that lime sludge is not subject to excise. The relevant paragraphs of the said Tribunal's decision (supra) are reproduced as under :

> "**4.** In the present case the issue is whether what that came out in the course of manufacture of principal goods whether shall amount to manufacture? We may state that Apex Court's judgment is based on the essential facts that the bagasse was classifiable under Chapter Heading No. 2303 20 00 of the First Schedule to the Central Excise

> Tariff Act, 1985 and that was subject to 'nil' rate of duty and the respondent in that case was manufacturer of sugarcane and molasses. In the course of process of manufacture of sugarcane, sugarcane was crushed and juice was extracted. Bagasse comes out as a residual waste of sugarcane. Present case is akin to the facts of *M/s. DSCL Sugar Ltd.* Therefore, there is no scope to entertain objection of Revenue and dilate the matter further even in spite of appearance of the waste in the tariff entry. Consequently, appeal is allowed.
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> **5.** Revenue raised the plea that the sludge generated was capable of being marketed stating that the waste generated was sold. It may be stated that amendment to the Section 2(d) of the Central Excise Act, 1944 was made with effect from 10-5-2008 to bring the capability of the goods being marketable to satisfy the twin test laid down by Apex Court in the case of *Board of Trustees* v. *Collector of Central Excise, Andhra Pradesh* reported in 2007 (216) E.L.T. 513 (S.C.). But present case is prior to this amendment to law. The law came into force at a later stage does not fasten the appellant to the liability. There being no intendment in tax laws, charging provisions cannot be loosely interpreted to agree to the proposition of Revenue. On that account also appellant succeeds."

5. After considering the facts and following the above decision, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside and the appeals are allowed with consequential reliefs, if any, as per law.

(Operative part of the order in court on 12.01.2021)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. ANJANI KUMAR**)
Member (Technical)

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