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

E/00190,00191/2008

[arising out of Orders-in-Appeal No.04 & 05/2008 CE (SLM), dated 26.02.2008 passed by the Commissioner of Central Excise (Appeals), Salem]

COMMISSIONER OF CENTRAL EXCISE, SALEM APPELLANT

Versus

M/s. NESTLE INDIA LTD. RESPONDENT

Appearance:

For the Appellant Shri S. Govindarajan, AC (AR)
For the Respondent Ms. L. Maithili, Adv.

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **14-08-2017**

FINAL ORDER NOS.41714 - 41715 /2017

Per Bench:

The facts in brief are that the appellants [M/s. Nestle India Ltd.,] are a 100% Export Oriented Unit and are manufacturers of 'Instant Tea' falling under Chapter 21 of Schedule to CETA, 1985. The instant tea so manufactured by them using various indigenous raw materials such, green leaf tea, black tea and undenatured tea waste, is cleared for export as well as sold in Domestic Tariff Area (DTA) during the period from Dec.'05 to Jun.'06 and for Jun.'05 to Nov.'05. As the instant tea is manufactured wholly from raw materials produced or manufactured in India, the appellant is availing the benefits of Notification No.8/97 and 23/2003 for the goods [Instant Tea] sold in DTA a well as for the goods cleared for captive consump[tion at their own Units at Moga and Samaikha. For the goods cleared to their own Units, the appellant has valued the goods in terms of Rule 8 of the Central Excise Valuation Rules, 2000 and arrived assessable value at 115% and 110% of the cost of production. It was held by the department that the appellant being a 100% E.O.U., the value determined by them should be under the provisions of Customs Valuation Rules and the price adopted should be the export value of the same or similar goods for assessment of goods permitted to be sold in the domestic sale. The original authority held that valuation should be done under Customs Law and confirmed the differential duty on the basis of the export value of the goods along with interest. In appeal, Commissioner (Appeals) set aside the demand. Hence, this appeal by department.

2. At the time of hearing, the learned counsel Ms. L. Maithili submits that the issue stands covered by the decision rendered by the Hon'ble Apex Court's in the respondent's own case reported in *2015 (326) E.L.T.226 (S.C.)*. Following the same ratio, we hold that the appeal filed by department is devoid of merit. The appeals are dismissed.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
16-08-2016

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / Chennai