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

Appeal Nos.E/253/2008 & E/254/2008

[Arising out of Order-in-Appeal No.07/2008 & 08/2008 CE (SLM) dt. 28.2.2008 passed by the Commissioner of Central Excise (Appeals), Salem]

Seshasayee Paper and Boards Ltd. Appellant

Versus

Commissioner of Central Excise, Salem Respondent

Appearance:

Shri Ramabhadra Raghavan, Advocate
For the Appellant

Shri S.Nagalingam, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision : 06.02.2017

FINAL ORDER No. 40183-40184/2017

Per D.N. Panda

Appellant says that Filter Cake emanated from the affluent plant was not marketable and the goods did not meet the twin test of law i.e. the goods must have been manufactured in India and must be marketable as has been held by the Apex Court in the case of *Board of Trustees Vs CCE A.P* – 2007 (216) ELT 513 (SC). When the appellant operated affluent plant, it has not intended to manufacture Filter Cake. Therefore emergence of that goods was nothing but waste and residue which are not marketable. Appellant further says that ld. Appellate Commissioner has held that Filter Cake obtained by the appellant is nothing but ETP sludge and that arose out of the affluent plant. Thus the contention of appellant being on two counts i.e. there was no intention to manufacture Filter Cake and the goods itself is found to be sludge by the Appellate Commissioner, the goods not meeting the twin test as has been held by the Apex Court in the case of *Board of Trustees* (supra) as well as *Union of India Vs DSCL Sugar Ltd.* – 2015 (322) ELT 769 (SC), there shall not be excisability.

2. But Revenue, on the other hand, says that appellant was a regular seller of the Filter Cake which was used for manufacture of lesser grade paper boards. He relies on the decision of Madras High Court in the case of *Mettur Thermal Power Station Vs CBEC and Other – 2015-TIOL-1948-HC-MAD-CX* to submit that when ultimate goods is manufactured out of waste, there shall be excisability.

3. At this stage, ld.counsel says that the term "capable of marketing" was introduced to law adding an *Explanation* to Section 2(d) of the Central Excise Act w.e.f. 10.05.2008. Therefore the contention of Revenue even fails on this count also.

4. Heard both sides and perused the record.

5. The categorical finding of the ld. Appellate Commissioner is that Filter Cake was sold which emanated from the affluent treatment plant and appellant did not intend to manufacture the same as its product. Therefore appellant is governed by the decision of the Apex Court in the case of *DSCL Sugar Ltd.* (supra). When the marketability aspect is looked into, *Explanation* added to Section 2(d) shall operate from the date that was introduced without any intention therein for

retrospective effect thereof. Therefore, the *Explanation* added to Section 2(d) of Central Excise Act,1944 incorporated w.e.f. 10.05.2008 shall operate from that date without brining Revenue's case into its fold for levy prior to that date. Revenue thereby failed to discharge its burden of proof demonstrating that the Filter Cake came out as a product itself intended to be manufactured and traded in market under common parlance. Revenue accordingly fails in its stand.

For the reasons aforesaid, both the appeals are allowed.

(Dictated and pronounced in open court)

09/02/2017

(Madhu Mohan Damodhar)
Technical Member

8/2/2017

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

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सहायक पंजीकार / Asst. Registrar
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