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

Appeal No. E/20/2009

[Arising out of Order-in-Appeal No.26/2008 (M-IV) dated 31.07.2008 passed by the Commissioner of Central Excise (Appeals), Chennai]

Carewell Pharma — Appellant

Versus

Commissioner of Central Excise,
Chennai-IV — Respondent

Appearance:

Shri P.C. Anand, C.A (Consultant)
For the Appellant

Shri L. Paneerselvam, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 21.04.2017

FINAL ORDER No. 40642/2017

Per Sulekha Beevi C.S

Appellants are engaged in manufacture of Patent or Proprietary Medicaments and were clearing the goods affixing the brand name of their distributor. The department was of the view that appellant is not eligible to avail the SSI Exemption Notification No.8/2003. Show cause notice was issued demanding differential duty of Rs.3,45,477/- for the period 2001-02 to 2005-06. After due process of law, original

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Customs, Excise & Service Tax Appellate Tribunal authority confirmed the demand along with interest and imposition of equal penalty. Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of appellant, Ld. Consultant, Shri P.C. Anand submitted that the issue stands settled against the appellant by the judgement in the case of *CCE Calcatta Vs Emkay Investments (P) Ltd.* rendered by Hon'ble Apex Court reported in 2004 (174) ELT 298 (SC). He argued that during the relevant period, there was judgement in favour of the appellant and therefore the appellant had affixed the brand name on the bonafide belief that they could avail benefit of SSI exemption even though brand name is of others. It is also pointed out that except an amount of Rs.257/-, appellant has paid entire duty liability and pleaded that duty demand of Rs.257/- may be waived and also penalty be set aside.

3. Against this, Ld.A.R Shri L. Paneerselvam reiterated the findings of the impugned order and submits that appellant is liable to pay entire duty as well as penalty.

4. We have considered the submissions made by both sides. It is seen that the issue stands settled by the Hon'ble Apex Court's judgment rendered in the case of *Emkay Investments (P) Ltd.* (supra). Following the same, we maintain the order passed by the Commissioner (Appeals) in respect of duty liability. The claim of the ld. Consultant to waive duty portion of Rs.257/- cannot be considered and therefore is brushed aside. However, ld. Consultant has put forward sufficient grounds to argue that during the relevant period the issue, whether appellant could use brand name of their marketing agency,

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was contentious and there were decisions in favour of appellant rendered by various High Courts. Therefore, we are of the view that penalty imposed can be set aside. Impugned order is modified to the extent of confirming duty liability along with interest and setting aside penalty. Appeal is partly allowed in the above terms.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै/Chennai