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

Appeal No.E/340/2009

[Arising out of Order-in-Appeal No.119/2008 (M-II) dt. 21.04.2009 passed by the Commissioner of Central Excise (Appeals), Chennai]

S.R. Mineral Water (P) Ltd. — Appellant

Versus

Principal Commissioner of Central Excise,
Chennai-I — Respondent

Appearance:

Shri M. Karthikeyan, Advocate
For the Appellant

Shri S. Govindarajan, 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 : 18.09.2017

FINAL ORDER No. 42126/2017

Per Bench

Appellants are manufacturers of packaged drinking water ('kinley' brand) on job work basis for M/s.Hindustan Coca Cola Beverages (P) Ltd. (HCCBL). Appellant used raw material / packing materials supplied by HCCBL and availed cenvat credit on the duty paid on such raw material / packing material. These packing materials / plastic containers are used during the course of manufacture and these are cleared as usable and returnable in nature. During the course of usage of such plastic containers, some of these items were found to have defects, breakage, leakage etc. As such plastic containers can no longer be used for the intended purpose, the appellant cleared them as waste. The department was of the view that appellant is liable to pay duty on such waste / scrap cleared and issued show cause notice proposing demand of duty, interest and also proposing imposition of penalty. After due process of law, original authority confirmed the demand of Rs.10,87,956/- along with interest and also imposed equal penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of appellant, Ld. counsel Shri M. Karthikeyan submitted that defective plastic containers were discarded since these plastic containers became unusable. Such plastic containers had brand name embossed on them, and the appellant could not clear them as on 'as is where is' condition. Since the damaged containers had the brand name, the appellants cut the plastic containers before removing them as waste and scrap. The department alleges that such cutting would result in "manufacture"

and therefore duty has to be paid. The Ld. counsel submitted that appellant had no intention to manufacture such waste and no new product emerges out of such process of cutting of the waste plastic containers and therefore levy of duty is not sustainable. He relied on Tribunal's decision in *Pepsico India Holdings (P) Ltd. VS CCE Meerut-II* – 2015-TIOL-1797-CESTAT-DEL = 2016 (343 ELT 645 (Tri.-Del.) and also Apex Court judgment in *Commissioner Vs Dhillon Kool Drinks & Beverages Ltd.* - 2002 (144) ELT A210 (SC).

3. Against this, Ld. A.R Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that cutting of the waste plastic containers was an activity incidental to the manufacturing process and therefore the demand raised in the order is sustainable.

4. Heard both sides. From the records as well as submissions made by both sides, we find that department has raised the demand alleging that the process of cutting of waste plastic container carried out by the appellant amounts to "manufacture". The appellant has cut the broken / defective containers because these bore the brand name. By such cutting of waste plastic containers no new product with a new name emerges. Such plastic containers before and after cutting are nothing but waste / scrap. It is correct that appellant has

no intention to manufacture waste and is registered for manufacture of packaged drinking water. The issue is similar to the issues decided in the case of *Pepsico India Holdings* as well as *Dhillon Kool Drinks & Beverages Ltd.* (supra)

5. The relevant paragraph in the decision of *Pepsico India Holdings* is reproduced for ready reference :

> "**6.** The point of dispute in this case is as to whether the glass bottles which were used for filling/packing of the aerated waters and which in course of manufacture of aerated waters were broken, and were cleared as glass scrap are excisable. The department's contention is that since, Cenvat credit had been taken in respect of the glass bottles, at the time of clearance of glass scrap, duty would be payable. However, we find that during the period of dispute there was no provision in the Cenvat Credit Rules, 2001/2002 providing that when Cenvat credit availed inputs are cleared as waste, some amount in respect of the same is required to be paid. It is only sometime in 2005 that Rule 3(5) was introduced in Cenvat Credit Rules, 2004 specifically, providing that when Cenvat credit has been taken in respect of certain inputs or capital goods and the same are cleared as waste or scrap, an amount as specified in that sub-rule would be payable. During the period of dispute, there was no such provision. Moreover, the department in these cases, has demanded Central Excise Duty by treating glass waste as manufactured product and this issue has been examined in the Tribunal's judgment cited by the ld. Counsel for the appellant on the basis of the Section 2(d) of the Central Excise Act, 1944. In view of this, we hold that the judgment of the Tribunal in the case of *Commissioner of C. Ex., Delhi* v. *Dhillon Kool Drinks & Beverages Ltd.* (supra) the civil appeal against which has been dismissed by the Apex Court vide judgment reported in 2002 (144) E.L.T. A210 (S.C.) and also judgments of Tribunal in the cases of *Hindustan Coca-Cola Beverages Pvt. Ltd.* v. *Commr. of C. Ex., Mumbai* reported in 2003 (159) E.L.T. 938 (Tri.-Mumbai), *Ponna Bottling Co. Ltd.* v. *Commissioner of Central Excise, Pune-II* reported in 2001 (134) E.L.T. 445 (Tri.-Mumbai), *Charminar Bottling Co. (P) Ltd.* v. *Commissioner of C. Ex., Hyderabad* reported in 2001 (134) E.L.T. 179 (Tri.-Del.),

> would be applicable to the facts of this case. The impugned order is, therefore, not sustainable. The same is set aside.
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> The appeal is allowed."

Applying the above decisions and also on appreciating the present facts and evidence placed before us, we are of the considered opinion that the demand is not sustainable. The impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

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