CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No. 40951 of 2017

(Arising out of Order-in-Appeal No.37/2017 (CXA-I) dated 09.02.2017 passed by Commissioner of Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg , Nungambakkam, Chennai 600 034)

M/s.ITC Limited **.... Appellant**
SBU-Packaging and Printing,
Post Box No.2277,
Thiruvottiyur,
Chennai 600 019.

VERSUS

The Commissioner of GST &
Central Excise, **... Respondent**
Chennai North Commissionerate,
26/1, Mahathma Gandhi Road,
Nungambakkam,
Chennai 600 034.

APPEARANCE :

Ms. L. Maithili, Advocate for the Appellant
Shri M. Selvakumar, Authorized Representative for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.41147/2025

DATE OF HEARING : 23.04.2025
DATE OF DECISION : 15.10.2025

Per: Shri P. Dinesha

The brief facts of the case are that the Appellant is the manufacturer of printed packaging materials falling under Chapter 39, 48 and 76 of the First Schedule to the Central Excise Tariff Act, 1985 and are registered with the Department. During the year 2012-13, the Appellant-Assessee had received the duty paid finished goods, namely paper products in their factory in few instances. They took credit of the duty paid on the value of finished goods returned under Rule 16 (1) of Central Excise Rules (CER), 2002. The Appellant had subsequently sold the aforesaid finished goods, namely paper products as 'scrap' on payment of appropriate duty on the scrap value; as no process amounting to 'manufacture' was carried out by the Assessee while clearing the finished goods as 'scrap', the Department was of the view that the Assessee is liable to pay an amount equal to the credit of duty taken by them at the time of receipt of finished goods, in terms of Rule 16 (2) of CER, 2002. It appears that when the finished goods were cleared as 'scrap', the Appellant had not paid the amount of R.14,03,964/- in terms of Rule 16 (2) of CER 2002 equal to the credit taken on the duty paid finished goods returned to their factory. However, the Appellant had reversed an amount of Rs.14,03,964/- on 23.07.2013 subsequently on being pointed out by the CERA Audit Party. Therefore, for contravention of Rule 16 (2) of CER, 2002 a Show Cause Notice No.21/2014 dated 12.11.2014 was issued to the Appellant (i) to appropriate the amount already paid by Assessee, (ii) to demand applicable interest under Section 11AA of Central Excise Act, 1944 and (iii) to impose equal penalty under Section 11AC (a) of the Act ibid. It appears that the Appellant filed its detailed reply to the SCN. After following due process, the Adjudicating Authority vide Order-in-Original No.15/2015 dated 13.10.2015 confirmed the proposals made in the SCN. Being aggrieved by the order of Adjudicating Authority, Appellant filed Appeal before the First Appellate Authority who, vide impugned Order-in-Appeal No.37/2017 (CXA-I) dated 09.02.2017 upheld the order of the Adjudicating Authority and against this OIA, the present Appeal has been filed by the Assessee before this forum.

2. Heard Ms. L. Maithili, ld. Advocate for the Appellant and Shri M. Selvakumar, ld. Assistant Commissioner for the Respondent. Ld. Advocate made submissions both on merits as well as on limitation.

3.1 Ld. Advocate would contend that packaging materials have to strictly comply with quality parameters specified by the customer. Even after stringent quality control, some of the packing materials could suffer from defects such as improper / faulty gluing, apart from mistakes in printing; since substantial supplies of the packaging materials are made to the Appellant's own units, when mistakes in gluing and other such rectifiable defects are reported by the recipient units, the Appellant received back the packaging material supplied for carrying out repairs and resending the same after such repairs.

3.2 The Appellant, upon receiving the rejected goods, subjected the same to various manufacturing operations such as regluing and when such repair, regluing and rectification processes did not result in the final product emerging in a marketable form, the same had to be cleared as 'scrap. Hence, the case of the Revenue that returned goods did not undergo any manufacturing process, is baseless.

3.3 Without prejudice to the above, Smt. Maithili also submitted that the SCN has been issued based only on the audit objections and moreover, the Order-in-Original came to be passed without considering the reply filed by the Appellant, in toto and hence, there is no scope to allege suppression to raise the demand by invoking the extended period of limitation.

4. *Per contra*, Shri M. Selvakumar, Ld. A.R for the Revenue submitted that since no specific manufacturing process was carried out on 'returned goods', the 'scrap' cannot be taken as 'manufactured goods'.

4.1 The Appellant did not disclose the receipt of impugned duty paid goods into the factory in the ER-1 returns. The Appellant had merely stated that they have disclosed the same in the returns. No proof in this regard was furnished. They have not placed any other internal documents to prove that they have paid duty before clearance of waste. Therefore, the demand has rightly been confirmed for contravention of Rule 16 (2) of CER, 2002 with interest.

4.2 The Ld. Commissioner (Appeals) at para-13 of the impugned order, has held that, had the facts not been unearthed by the visit of CERA Audit, the whole activity would have gone unnoticed and hence, invocation of extended period of limitation is justified in this case.

5. Heard the rival contentions and after perusing the documents placed on record, the short point that arises for

our consideration is, whether the demand as upheld in the impugned order is sustainable ?

6. The issue on hand revolves around interpretation of Rules 16 (1) & 16 (2) of Central Excise Rules, 2002. Therefore, we have to consider primarily 'suppression' in this context.

7. On the factual matrix, the observation of the Commissioner (Appeals) in the impugned order, specifically that the Appellant did not place any internal document to prove that they had paid duty before clearance of waste runs to contrary to the very allegation in the SCN dt. 12.11.2014 wherein it has been observed that (para-3) that *assessee had subsequently sold the aforesaid finished goods namely paper products as scrap on payment of appropriate duty on the scrap value* and hence, the argument of Ld. A.R who has reiterated the above contention, has no merit.

8. In the context of the above, the allegation of the Revenue as to non-disclosure in the ER-1 returns and the counter by the Appellant as to disclosing the particulars in its ER-1s assumes relevance. But strangely, without

investigating to place proper factual findings on record, the Revenue has only tried to blow hot and cold at the same end, i.e. one for accepting the payment of duty and another when it comes to clearance of scrap since the Appellant did make an attempt to salvage the returned goods. In any case, it is an undisputed fact that only when dismantling the damaged goods the usability of various components could be ascertained; the process of dismantling, retrieving and identifying the usable parts/components is invariably the first step in the process of using the returned goods in the further manufacture and hence, the dismantling/salvaging is part and parcel of such manufacturing process. The fact that while the usable salvaged items were put to manufacturing stream all the unusable items were cleared by the Appellant on payment of duty, has remained undisputed.

9. In any case, as understood by us, when an issue is related to interpretation on which two views are always possible, the authorities may dispute the view entertained by the appellant but that ipso facto is seriously insufficient to conclude that there was suppression. In view of the above discussions therefore, we do not find any merit in the impugned order and hence, we set aside the same and allow

the Appeal on limitation, with consequential benefits if any, as per law.

(Order pronounced in open court on 15.10.2025)

(M. AJIT KUMAR)
Member (Technical)

(P. DINESHA)
Member (Judicial)

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