CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI
PRINCIPAL BENCH, COURT NO. 4

EXCISE APPEAL NO. 50463 OF 2021

[Arising out of Order-in-Appeal No. 104 and 105 (SM) /CE/JPR/2020 dated December 31, 2020 passed by the Commissioner (Appeals) Central Excise & CGST, Jaipur]

M/S VARUN BEVERAGES LIMITED **Appellant**

SP-646 & F-647-656, Matsya Industrial Area,
Alwar, Rajasthan-301030

Vs.

COMMISSIONER (APPEALS) CENTRAL EXCISE & CGST-JAIPUR **Respondent**

Office of the Commissioner (Appeals) Central Excise and CGST, NCRB, Statute Circle, Jaipur-302005

AND

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Appearance:

Present for the Appellant : Shri Bimal Jain, Advocate
Present for the Respondent: Shri O P Bisht, Authorised Representative

CORAM:

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MR .P. V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOS. 50962-50963 /2023

DATE OF HEARING/DECISION: 10/07/2023

P V SUBBA RAO:

The appellant manufactured cartons /boxes/tray/pads/sheets etc. of corrugated paper and paper board which are classifiable under heading[1] 48191010 of the first schedule to the Central Excise Tariff Act, 1985 and cleared them availing the benefit of exemption Notification No. 4/2006–CE dated 01.03.2006 as amended by further Notifications No. 10/2010 and 12/2012 dated 17.3.2012.

2. According to the Revenue, the benefit of this notification is not available to corrugated tray /pads as it covers corrugated cartons, boxes and cases of corrugated paper or paperboards and not corrugated tray / pads. The relevant text of the notification is as follows:

A. Notification No. 04/2006-CE amended vide Notification No. 10/2010-CE dated 27.02.2010, which reads as under:

1	2	3	4	5
96E	481910	Cartons, boxes and cases of corrugated paper or paper board	4%	12

Condition no.	Condition

1 CETH

12	The exemption shall be applicable to the units manufacturing cartons, boxes or cases, as the case may be, starting from the stage of brought out Kraft paper and not having the facility to manufacture Kraft paper in the same factory

B. W.e.f. 17.3.2012, entry no. 171 of Notification No.12/2012- CE dated 17.3.2012 is as below:-

1	2	3	4	5
171	481910	Cartons, boxes and cases, of corrugated paper or paperboard whether or not pasted with duplex sheets on the outer surface	6 %	13

Condition no.	Condition
13	The exemption shall be applicable to the units manufacturing cartons, boxes or cases, as the case may be, starting from the stage of Kraft paper, corrugated paper, corrugated sheet, corrugated board or any one or more of these stages and not having the facility to manufacture Kraft paper in the same factory.

3. According to the appellant, the word "CASES" of the corrugated paper or paper board appearing in the above mentioned exemption notification No. 4/2006 dated 1/3/2006 as amended by notification No. 12/2012 dated 17.3.2012 covers all kind of cases like containers, framework, cover used for the purpose of safekeeping or protecting something and packing material for ensuring safe transportation of various kinds of products including bottles.

4. This issue was discussed at length and it has been decided by this Tribunal in favour of this assessee by FINAL ORDER No. 52491-52492 /2018 dated 14.06. 2018 in Excise

Appeals No. 52323 & 52882 of 2016. Relevant extract of the order is below.

> 8. We have heard both the sides and have perused the record of the appeal. We find that Notification No. 4/2006 dated 1.3.2006 as amended by Notification No. 10/2010 CE dated 27.2.2010 and notification No. 12/12 CE dated 17.3.2012. It is seen that notification specifically covers products classified under Chapter sub heading 481910. On further perusal of the Tariff, it is seen that Chapter subheading 4819.10 covers all products of description as cartons / boxes and cases of corrugated paper or paper board. Chapter sub-heading 4819.10 has two categories for classification of the such kind of products (1) under CETH sub 48191010 only the boxes of corrugated paper or paper board; are covered; (2) Under second category, CETH 48191090 it covers all kinds of products which are made of corrugated paper and corrugated paper board including the cartons, cases and similar other goods. Coming back to the product manufactured by the appellant, we have seen the photograph of the sample of products manufactured which are known in trade parlance as corrugated trays and corrugated pads. These products are primarily used for packing and transportation of various kinds of bottles/ cans after wrapping the same with plastic sheets. The primary purpose and use of such corrugated trays and pads is for packing and safekeeping and safe transportation of the product as is the purpose of boxes and cartons.
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> 9. There is no denial of fact that the product in question are product of corrugated paper and corrugated paper board and these are also used for packing and safe transportation of the bottles and cans as other products of corrugated paper and paper board such as cartons, or boxes, are being used. We are of opinion that the exemption notifications No.4/2006-CE amended vide Notification No. 10/2010-CE dated 27.2.2010 and Notification No. 12/2012 CE dated 17.3.2012 have mention of only Chapter sub-heading 481910 which further has two sub sub heading as following:
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> 481910 - CARTONS, BOXES and cases of corrugated paper or paperboard:
>
> 48191010 - BOXES
>
> 48191090 - OTHER

> 10. Thus, the products classifiable under both the sub-sub-headings will be entitled to the exemption notification. Since the corrugated pads/ trays are classifiable under 48191090 under „OTHER“ category. Same in our opinion is entitled for the benefit of concessional rate of duty under above mentioned notifications. 11. Now coming to the condition under these notification which says "exemption shall be applicable to the units manufacturing cartons, boxes or cases, as the case may be" In our view "as the case may be" need to be read and applied liberally to mean that similar other products of corrugated paper and board and thus, we find that corrugated trays, pads are certainly qualify to the benefit of exemption notification.
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> 12. In view of the above, we are of the view that corrugated pads/ trays are classifiable under CETH 48191090 under the overall classification under subheading 481910 are nothing but the product of corrugated paper and paper board and same are entitled for benefit of notification No. 4/2006-CE dated 1.3.2006 as amended as well as under notification No. 12/2012-CE dated 17.3.2012.
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> 13. In view of the above, we do not find any merit in the impugned order-in-original and therefore same is set aside and appeals are allowed.

5. This decision was again followed by the Tribunal in Final Order No. Final Order No. 50382/2019 dated 15.2.2019 in Excise Appeal No. E/53375/2018 in the case of this appellant itself. These decisions of the Tribunal were not set aside or stayed by any High Court or Supreme Court. Thus, the issue is no more *res integra.*

6. The impugned orders were passed by the Commissioner (Appeals) ignoring the aforesaid orders of this Tribunal were placed before him in gross violation of the judicial discipline and through open defiance. The relevant portion of the

impugned order in Appeal No E/50464/2021 is reproduced below:

> "12. As regards the contention of the appellant that the Hon'ble CESTAT in their own case on the same issue for the previous period vide Final Order No. A/52491-52492/2018-EX (DB) dated 14.06.2018 and Final Order No. A/50382/2019-EX (DB) dated 15.02.2019 have extended the benefit Notification No. 12/2012-CE dated 17.03.2012, I find that both the above final order have not been accepted by the department on merits. **I find that those Final Order of the Hon'ble CESTAT were accepted by the competent authority on Low Monetary ground in terms of the CBIC Instruction issued under F. NO. 390/MISC/163/2010-JC dated 20.10.2010, as amended vide F. NO. 390/MISC/116/2017-JC dated 11.07.2018(hereinafter referred to as the said Instruction dated 11.07.2018). Hence, the issue has not attained finality. In this regard I also find that in terms of para 7 of the said Instruction dated 20.10.2010 issued under F. No. 390/Misc/163/2010-JC, it has been clarified that the case accepted on ground of Monetary Limit cannot be made as precedent value for other cases of identical/similar nature."**
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> **(emphasis supplied)**

7. Thus, the Commissioner (Appeals) was fully aware of the binding precedent decision of this Tribunal which he was bound to follow whether or not he likes or agrees with it. He not only ignored the binding judicial precedent but openly defied it in writing in the impugned order in gross violation of the judicial discipline and in a manner unbecoming of the post of Commissioner (Appeals). This principle of the lower judicial authority being bound by the decision of the higher judicial authority was discussed by the Supreme Court in **Kamlakshi**

Finance [2] . The relevant portions of this judgment are reproduced below.

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2. The assessee preferred an appeal to the Collector (Appeals) who set aside the order of the Assistant Collector. He observed that reason given by the Assistant Collector for not following the order of the Collector of Central Excise (Appeals) on which the assessee had placed reliance before him was totally untenable. He set aside the order appealed against and directed the Assistant Collector to pass a reasoned and speaking order.

3. When the matter thus went back to the Assistant Collector he passed an order on 12-5-1989, reiterating the conclusion that had been reached by his predecessor. **He also did not give any reasons as to why the order of the Collector (Appeals) in respect of the Borivili plant was not followed. Not only this, the assessee had placed before him a decision of the Central Excise and Gold Control Appellate Tribunal (`the Tribunal') in the case of *M/s. Chetna Polycoats (P) Ltd.,* reported in 1988 (37) E.L.T. 253 to a similar effect. The Assistant Collector distinguished it observing that the said decision had not been agreed to by the Department which had filed an appeal to the Supreme Court therefrom.** The second order passed by the Assistant Collector was practically a repetition of the earlier order.

4. The assessee thereupon filed a writ petition in the Bombay High Court. The High Court quashed the order of the Assistant Collector and directed the department to allocate the matter to a competent officer to pass a proper order [1990 (47) E.L.T. 231 (Bom.)]. The Union of India has preferred this appeal. The learned Additional Solicitor General, appearing for the Union, fairly concedes that so far as the merits are concerned, the department can have no grievance, since the High Court has only set aside the order of the Assistant Collector and remanded the matter back for a proper consideration and a proper order. We are, therefore, not called upon to enter into the merits of the classification in the present case except to observe that the decision of the Tribunal in the case of *M/s. Chetna Polycoats Pvt. Ltd.* was the subject-matter of Civil Appeal No. 2321 of 1989 preferred by the department which was dismissed at the stage of admission by this Court on 13th February, 1991 [1991 (53) E.L.T. A-28 (SC) - 1-5-1991].

5. The learned Additional Solicitor General, however, submits that the learned Judges have erred in passing

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2 1991 (55) E.L.T. 433 (S.C.)

severe strictures against the two Assistant Collectors who had dealt with the matter. He submitted that these officers had given reasons for classifying the goods under Heading 39.19 and not 85.46 and could do no more. He submitted that they acted *bona fide* in the interests of Revenue in not accepting a claim which, they felt, was not tenable.

6. Sri Reddy is perhaps right in saying that the officers were not actuated by any *mala fides* in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual *mala fides* but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. **The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.**

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. ……...

8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would

> like to say that the department should take these observations in the proper spirit. **The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them.**
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> **(emphasis supplied)**

8. In these two cases, the Commissioner (Appeals) passed the impugned orders in gross violation of the principle of judicial discipline laid down by the Supreme Court in **Kamlakshi Finance.**

9. It also needs to be pointed out that the Commissioner (Appeals) is not an executive of the Revenue but is a quasi-judicial authority to decide the appeals with a lis between the Revenue and the tax payer and therefore, cannot issue orders based on what is acceptable or not to the Revenue which is only one of the parties before him. He should be neutral and unbiased and cannot pass Orders based on what one party (Revenue) desires and violate judicial discipline if the orders of superior judicial fora if they are not acceptable to the Revenue. As held by Supreme Court in **Kamlakshi Finance,** the expression that the decision is not acceptable itself is an objectional phrase even if used by the Revenue authorities. In this case, Revenue did not appeal against the precedent decisions of this Tribunal but the Commissioner (Appeals), went further than the Revenue and said that since the Revenue has not appealed against the orders of the Tribunal

because of monetary limits, there is no precedent value of the decision of the Tribunal. Clearly, the impugned order is perverse because it is openly one-sided championing the case of the Revenue and goes further to say that if the decisions of the Tribunal are against the Revenue and are not appealed against on account of monetary limits, the decision of the Tribunal is not binding precedent.

10. The impugned orders are, therefore, openly biased, one-sided and have been passed in violation of the judicial discipline as laid down by the Supreme Court in **Kamlakshi Finance**. The issue is squarely covered by the decision of this Tribunal in respect of the appellant for previous period which are respectfully follows.

11. The impugned orders are set aside and the appeals are allowed with consequential relief to the appellant. Parties to bear their own costs.

(Dictated and pronounced in open court)

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

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