

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. IV

DATE OF HEARING : 01/06/2017.
DATE OF DECISION : 01/06/2017.

Excise Appeal No. 2492 of 2010

[Arising out of the Order-in-Appeal No. 189/CE/APPL/D-II/2008 dated 06/05/2010 passed by The Commissioner (Appeals), Central Excise Commissionerate, Delhi – II, New Delhi.]

CCE, Delhi – II

Appellant

Versus

M/s Sunehari Oral Care

Respondent

Appearance

Shri R.K. Mishra, Authorized Representative (DR) – for the appellant.

Shri B.K. Singh, Advocate – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53644/2017 Dated : 01/06/2017

Per. B. Ravichandran :-

Revenue is in appeal against order dated 06/05/2010 of Commissioner (Appeals), Central Excise, Delhi – II. The respondent have different manufacturing units engaged in the manufacture of toothpaste and tooth powder liable to Central Excise duty. They are manufacturing excisable items with their own brand name and also brand name of others. The dispute in

the present case relates to the eligibility of the respondents to avail exemption under Notification 8/2003-CE dated 01/03/2003. The Revenue entertained a view that the appellants were not eligible for the exemption available to small scale units as they have availed Cenvat credit of duty paid on inputs in respect of one unit and whereas in another unit they have availed SSI exemption and cleared goods without payment of duty. Accordingly, proceedings were initiated against them to demand and recover Central Excise duty not paid during the period 2006-2007, amounting to Rs. 14,16,647/-. The Original Authority confirmed the demand on the said amount and imposed penalty of equivalent amount on the main respondent. On appeal, vide the impugned order the Commissioner (Appeals) set aside the original order and held that the SSI exemption cannot be denied to the respondent only on the ground that they have availed Cenvat credit for payment of duty in one unit.

2. The Revenue is aggrieved by the said order and filed this appeal. The learned AR elaborated the grounds of appeal and submitted that the respondent cannot avail simultaneously SSI exemption in one unit and take Cenvat credit and pay duty in another unit. He further submitted that the reliance placed by the impugned order on the decision of the Tribunal in **Kinjal Electricals Pvt. Ltd. vs. CCE, Meerut** reported in **2004 (165) E.L.T. 300 (Tri. – LB)** is no more valid as the same has been set aside by the Hon'ble Supreme Court in **Universal Drinks Pvt. Ltd. – 2007 (217) E.L.T. A76 (S.C.)**.

3. The learned Counsel appearing for the respondent submitted that the present appeal by Revenue is on erroneous appreciation of facts. He categorically submitted that they have different types of clearances of excisable goods namely export, domestic clearances with brand name of other's and domestic clearances with their own brand name. They have availed Cenvat credit only in respect of inputs used in the manufacture of goods with other's brand name and also meant for export. The clearances of goods with other's brand names is outside to purview of the said exemption notification, for both for eligibility of exemption as well as for counting of turnover. As far as domestic clearances without other's brand name they have not availed any credit and their turnover is also well within the permissible limits for the current as well as preceding years. He also submitted various tables containing value of clearances of different types of products by the respondents from different units.

4. We have heard both the sides and perused the appeal records. Admittedly, the respondents had manufactured and cleared goods both for export as well as for domestic use. There can be no dispute regarding treatment of export goods and the credit available to such manufacture. Regarding domestic clearances, we find that clearances with brand name of another person are not within the ambit of the SSI notification. In other words, such clearances have to discharge duty at the applicable

rates. Necessarily, the credit available in the inputs use on such manufacture cannot be denied. We note that for calculating turnover as well as to find out the threshold limit of exemption for domestic clearance of specified goods, the details furnished by the respondent are to be verified and as directed by the impugned order short payment, if any, can be recovered only to that extent. In other words the credit availed for manufacture of goods with other's brand name as well as for export is of no consequence, to decide the eligibility of the respondent in respect of domestic clearances in terms of the said notification. We find that the reliance placed by the Revenue on the decision of Hon'ble Supreme Court over-ruling the decision of Larger Bench in **Kinjal Electricals Pvt. Ltd.** (supra) is of no reliance to the facts of the present case. The Hon'ble Supreme Court in **CCE, Chennai vs. Nebulae Health Care Ltd.** reported in **2015 (325) E.L.T. 431 (S.C.)**, dealing with the present notification held that manufacture of goods in other's brand name is not in the ambit of the said SSI exemption. Once excise duty was paid on such goods, the SSI units is entitled for credit of excise duty paid on such goods. Availment of such credit will not disentitle the SSI units, the exemption for goods manufactured on their own account.

5. In view of the above legal position, we find no merit in the present appeal by the Revenue. The turnover, eligibility of the respondent for SSI exemption can be re-verified by the

Jurisdictional officer, as directed by the impugned order. With this observation, the appeal by the Revenue is dismissed.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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