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. I

DATE OF HEARING : 12/06/2017.
DATE OF DECISION : 15/06/2017.

Excise Appeal No. 55832 of 2014

[Arising out of the Order-in-Appeal No. BPL-EXCUS-000-APP-116-117-14-15 dated 26/08/2014 passed by The Commissioner (Appeals), Customs, Central Excise & Service Tax, Bhopal.]

M/s Bhaskar Venkatesh Products (P) Limited — Appellant

Versus

CCE & ST, Bhopal — Respondent

Appearance

Shri Sandeep Mukherjee, Advocate – for the appellant.

Shri H.C. Saini, Authorized Representative (DR) – for the Respondent.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54034/2017 Dated : 15/06/2017

Per. B. Ravichandran :-

The appeal is against order dated 26/08/2014 of Commissioner (Appeals), Bhopal. The appellants are engaged in the manufacture of detergent powder and detergent cake liable to Central Excise duty. The products manufactured by the appellants are liable to duty based on MRP in terms of Section 4A of Central Excise Act, 1944. The appellants by way of sales promotion, introduced a composite package of 1 kg. of detergent powder with 1 detergent cake, in a single retail package and fixed MRP of Rs. 36/- for the same. The said package was printed with following details :-

> "MRP Rs. 36/- (incl. of all taxes)
> Including with the price of
> Tanman Detergent Cake
> 160 g. fill"

The package mentioned that the MRP of detergent cake was Rs. 0.00. It was clearly written on the pack that the detergent cake is free, with 1 kg. of detergent powder. The Revenue entertained a view that the duty liability of such retail package containing powder and cake is to be computed by taking MRP of individual items, when sold separately. Accordingly, proceedings were initiated against the appellant resulting in the original order dated 21/11/2013, which confirmed Central Excise duty demand of Rs. 3,30,882/-, Rs. 3,10,548/- and Rs. 4,66,575/-, as demanded in different show cause notices. Equal amount of penalties were also imposed in terms of Rule 25 of Central Excise Rules, 2002. On appeal, the impugned order upheld the original order, except for reduction of penalty under Rule 25.

2. The learned Counsel for the appellant submitted that the lower Authorities fell in error in appreciating the provision of Section 4A readwith Legal Metrology (Packaged Commodity) Rules, 2011. The price realised by the appellant is for the whole

retail combo pack. The single retail packaging of the detergent cake and detergent powder is a combination pack. Mentioning of retail sale price on the single retail package was as per the law applicable. The learned Counsel relied on the decision of the Tribunal in **Himalaya Drug Company vs. CCE, Bangalore – III** reported in **2006 (195) E.L.T. 109 (Tri. – Bang.)** as affirmed by Hon'ble Supreme Court reported in **2015 (324) E.L.T. 9 (S.C.)** and decision of the Tribunal in **Icon Household Products (P) Ltd. vs. CCE, Pondicherry** reported in **2007 (216) E.L.T. 579 (Tri. – Chennai)** as affirmed by Hon'ble Supreme Court reported in **2016 (340) E.L.T. A38 (S.C.)**.

3. The learned AR supported the findings of the lower Authorities.

4. We have heard both the sides and perused the appeal records. The facts of the case are not in dispute. Admittedly, the appellants sold combination pack, in retail, containing 1 kg. of detergent powder with 160 gm. detergent cake. The sale price of the combination retail pack is printed on the pack. The retail pack clearly indicated the MRP as Rs. 36/- which includes the price of detergent cake. In such situation, we find no justification in further adding up the value or for demand of any differential duty. We note that reference made by learned AR to the Circular dated 19/02/2010 of the Board is not relevant to the present case. The said circular dealt with valuation of free physician samples of medicine. In the present case, we are dealing with the

combination pack of consumer product sold with a single MRP. As a marketing strategy one of the product in such combo pack is declared to be free. However, the details printed on the combination pack makes it clear that the MRP is for detergent cake also. In a similar set of facts dealing with the mosquito repellant liquid sold with vaporizing device, the Tribunal in **Icon Household Products (P) Ltd.** (supra) held that when both the items in the combi pack are manufactured and sold with declared MRP, the item declared to be sold free need not be separately assessed to duty. The said decision of the Tribunal has been affirmed by the Hon'ble Supreme Court, relying on the decision in **Himalaya Drug Company** (supra). As such, we find the issue is no more res-integra in view of the clear finding recorded by the Tribunal and affirmed by the Hon'ble Supreme Court. Accordingly, we find the impugned order is without merit and set aside the same. The appeal is allowed.

(Order pronounced in the open court on 15/06/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

PK