CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 11.08.2017

Excise Appeal Nos. 173, 674 to 678 of 2011

(Arising out of order-in-appeal No. IND/351 to 356/2010 dated 28.10.2010 passed by the Commissioner (Appeals) Central Excise & Customs, Indore).

M/s Malwa Vanaspati & Chem. Co. Limited Appellant
Tarun Purohit, VP

Vs.

CCE, Indore Respondent

Appearance:

Ms. Priyanka Goel, Advocate for the appellant
Sh. R. K. Mishra, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 55948 – 55953/2017

Per: **Justice (Dr.) Satish Chandra**:

All the appeals have been filed against the order-in-appeal No IND/351 to 356/2010 dated 28.10.2010, passed by the Commissioner (Appeals), Central Excise & Customs, Indore. The period of dispute is March 2006 to March, 2009.

2. Brief facts of the case are that the appellant during the period under consideration, were engaged in the manufacture of handmade soap falling under Chapter 34 of the Central Excise Tariff. The appellant was also manufacturing soya oil bearing the brand name of other persons on job work basis by taking the

combined turnover. The benefit of SSI exemption was denied. Being aggrieved, the present appeals have been filed by the appellants.

3. With this background, we heard Ms. Priyanka Goel, ld. Advocate for the appellant & Sh. R. K. Mishra, ld. AR for the respondent.

4. After hearing both sides, it is evident that the appellant was doing the job work of soya oil for which the job work charges were taken. The excise duty was paid by the principal. It may be mentioned that the branded item i.e. soya oil was manufactured by the appellant on job work basis for which the excise duty was paid separately. At the same time, the appellant was also manufacturing handmade soap bearing their own brand name i.e. 'Malti'.

5. It may be mentioned that in the case of ***CCE, Chennai vs. M/s Nebulae Health Care Ltd. – 2015-TIOL-261-SC-CX***, the Hon'ble Supreme Court observed that

> "*for availing SSI exemption under the notification the goods can be manufactured for third parties where the brand name of third parties bear the brand name of those third parties and in respect of such goods manufactured for third parties, the assessees paid the normal duty of excise but at the same time availed the benefit of modvat/ cenvat credit as well. Thus, to put it succinctly, the real issue is as to whether availing the benefit of modvat/ cenvat credit in respect of branded goods of third parties manufactured by the assessee on job work basis, disentitles them from availing the benefit of the aforesaid notifications*.
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> The Hon'ble Supreme Court further observed that -
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> "*these branded goods manufactured by the SSI units meant for third parties are regulated by the normal provisions of excise law and will have no bearing or relevance insofar as availing the benefit of those exemption notifications in respect of its own products manufactured by the SSI units is concerned*".

6. After hearing both sides and on perusal of record, it appears that the turnover for own product is below the prescribed limit mentioned in the

notification. When it is so, then following the ratio laid down by the Hon'ble Supreme Court in ***Nebulae Health Care Ltd***. (supra), we find no reason to sustain the impugned order and the same is hereby set aside.

7. In the result, appeals filed by the appellant are allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant