

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II**

Date of Hearing/Decision: 19.12.2018

Appeal No. E/52327/2018-DB

[Arising out of Order-in-Original No. OIA-105-AK-CE-JPR-2017-18 dated 04/04/2018 passed COMMISSIONER OF CGST & CENTRAL EXCISE-JAIPUR-I(Appeal)]

PREM HENNA PVT LTD

Appellants

Vs.

C.C.E. & S.T.-JAIPUR-I

Respondent

Appearance:

Shri Rupesh Kumar, Shri Pravesh & Shri Jitin Singhal, Advocate for the Appellant
Shri S.K. Bansal, Shri R.K. Mishra, DR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

Hon'ble Shri Bijay Kumar, Member (Technical)

FINAL ORDER NO. 53561/2018

Per Anil Choudhary:

1. The appellant has filed the present appeal challenging the Order-in-Appeal No. 105(AK)CE/JPR/2017-18 dated 04.04.2018 passed by the learned Commissioner (Appeals), Central Excise and GST, Jaipur, wherein he has upheld the demand of central excise duty confirmed along with interest and penalty vide Order-in-Original dated 25.10.2016 passed by the learned Assistant Commissioner Jaipur by denying the benefit of Notification No. 12/2012-CE dated 17.03.2012, as amended.

2. The brief facts as per show cause notice is that the appellant is engaged in the manufacture of Mehandi Cone/Paste and Mehandi Powder. The appellant was

clearing the said goods without payment of central excise duty by availing the benefit of exemption under Notification No. 12/2012-CE dated 17.03.12.

3. A show cause notice dated 23.06.2014 was issued to the appellant for the period June 2013 to March 2014 proposing to deny the exemption and for recovery of central excise duty of Rs.30,21,725/- on the ground that the appellant was not entitled to claim benefit of exemption under Notification No. 12/2012-CE, as the said notification exempts pure henna powder or paste not mixed with any other ingredient, whereas, the appellant was mixing oils with henna powder for manufacture of paste and it was not possible to make Henna paste without adding or mixing of oils. The Asstt. Commissioner being the adjudicating authority, passed Order in Original dated 25.10.2016 and upheld denial of exemption under Notification NO. 12/2012-CE to the appellant and, consequently confirmed the central excise duty of Rs. 30,21,725/- along with interest and imposed penalty of Rs.15,10,863/- on the appellant. In the show cause notice no reference or reliance was placed on the CRCL report, however, the Assistant Commissioner placed reliance on the CRCL report dated 29.05.2014 which pertained to a different period, than the period covered in the present proceedings.

4. The appellant challenged the OiO dated 25.10.2016, by way of filing appeal before the CCE(A) who vide impugned Order-in-Appeal dated 04.04.2018 rejected the same and upheld the OIO. Being aggrieved, the appellant is before this Tribunal.

5. We have heard Sh. Rupesh Kumar, Advocate along with Sh. Jitin Singhal, Advocate, the learned Counsel for the appellant and Sh. S.K. Bansal & Shri R.K. Mishra, learned DRs for the respondent.

6. After hearing the Id. Counsel for the appellant and Id. AR for Revenue and on perusal of records, we note that the said entry under notification is very clear with reference to henna paste. The only condition is that the said paste should not have been mixed with any other ingredients. The scope of the said entry was clarified by the Board vide letter dated 10.07.2014. The Board clarified as below:-

“Doubts have been raised regarding the scope of the exemption from excise duty available for heena powder or paste under Sl.No.134 of notification 12/2012-Central Excise dated 17th March, 2012 in the context of the phrase “not mixed with any other ingredient”. It is clarified that the exemption is available to heena powder mixed with a liquid, so far that the liquid is a medium to change the form of heena powder into paste but excludes products like heena dye and such other products which are cosmetics.”

7. Ld. AR submitted that henna paste containing other ingredients is not covered by the said exemption.

8. Ld. Counsel for the appellant countered the same stating that henna paste is mixed with clove oil mainly, to give longevity and preservation of the henna for later use, (after many days). This is required for marketing the product. As such, no other ingredients etc. is added in the henna powder to make the henna paste.

9. We note that the objection of the Revenue, that no other ingredients should have been added to claim the exemption, is correct. However, the facts of the

present case did not reveal that any other ingredients at all has been added in making the henna paste. Admittedly, the clove oil is a liquid used to make henna paste from powder and make it marketable as such paste in cones. We note that the said process is for making the paste, marketable/useable much later by the customers. There is no evidence on record which could show presence of any active ingredients to heena powder to make the heena paste other than the said oil or liquid. Therefore, the present appeal of the appellant is required to be allowed in view of clarification issued by Board vide letter dated 10.07.2014.

10. We also find that the SCN was issued to the appellant only on the ground that the appellant was mixing clove oil with Henna Mehandi Powder for manufacture of Henna Paste. There is no allegation in the show cause that that the appellant was adding any chemical in the Henna Powder, while converting it into paste. No sample of the product in question i.e. Henna Powder and Henna Paste, were drawn by the department of the product in question during the relevant period. Further, the SCN also does not rely upon any CRCL test Report. The Ld AR appearing for the revenue accepted this factual position. However, he tries to justify the adjudication order and the impugned order wherein reliance was placed on the CRCL Report dated 29.05.2014, which did not pertain to the period covered in the SCN, but was for the subsequent period, as is clear from the date of the CRCL Report. We are not convinced by the said argument of the Ld AR in view of settled law, as laid down by the Apex Court in the case of Commissioner of Central Excise, Nagpur v Ballarpur Industries Ltd. 2007 (215) ELT 489 (SC) wherein it has been laid down as under: -

12. In view of the above referred position of law, we hold that the adjudicating authority as well as the first appellate authority was not correct in placing reliance on the CRCL Report dated 29.05.2014 which was neither forming part of the SCN nor pertained to the lot which were manufactured and cleared by the appellant during the period covered in the SCN i.e. June 2013 to March 2014.

13. Accordingly, the Order-in-Appeal dated 04.04.2018 passed by the CCE(A) is set aside and the appeal filed by the appellant is allowed, with consequential relief.

(Operative portion of the Order pronounced in the open court)

(Bijay Kumar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha