CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
E/738/2009	APL PEROXY, CHEMICALS LIMITED	CCCE&ST, Guntur	O-I-A No: 16/2009 (G) CE, dt. 30.04.2009, passed by CCE, Guntur.
E/739/2009	APL PEROXY, CHEMICALS LIMITED	CCCE&ST, Guntur	O-I-A No: 17/2009 (G) CE, dt. 30.04.2009, passed by CCE, Guntur

Appearance
Shri G. Prahlad, Advocate & Shri Ch. Sumanth, CA for the Appellant.

Shri B.Guna Ranjan, Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 03.05.2018
Date of Decision: 03.05.2018

FINAL ORDER No: A/30609-30610/2018

[Order per: M.V. Ravindran]

1. These two appeals are directed against Orders-in-Appeal Nos. 16/2009 (G) CE, dt. 30.04.2009 and 17/2009 (G) CE, dt. 30.04.2009. Appellants herein are engaged in manufacturing of Hydrogen Peroxide, they import Hydrogen Peroxide in various types of containers through ports

in bulk containers of 20 tonnes and in some cases Hydrogen Peroxide is imported in individual cans weighing 30 Kg or 65 Kg as the case may be; the said shipment of Hydrogen Peroxide accompanies by a test certificate issued by the supplier; appellant discharged proper customs duty on such imports and avails CENVAT credit of the counterveiling duty paid on imported Hydrogen Peroxide; supplies the said Hydrogen Peroxide by adhering to the technical parameters of their purchasers on payment of appropriate Central Excise duty. A show cause notice was issued to appellant proposing to demand the CENVAT credit availed on the imported Hydrogen Peroxide on the grounds that the activity undertaken by the appellant does not amount to manufacture, which was replied in detail. The adjudicating authority did not agree with the contentions raised and confirmed the demands raised. Aggrieved by such an order, appellants filed appeal before the first appellate authority, who after following the due process of law, upheld the demands confirmed by Order-in-Original.

2. Ld. Counsel after taking the Bench through the entire case of records submits that the demand in the case in hand is only in respect of CENVAT credit availed on imported Hydrogen Peroxide in 30 Kgs and 65Kgs individual cans. It is his submission that the appellant, after receipt of such Hydrogen Peroxide, availed the CENVAT credit of the CVD paid, reviews the samples from the cans and after testing add stabilizers and undertake stirring to render the imported Hydrogen Peroxide marketable to the customer as a product manufactured by them. It is his further submission

that the adjudicating authority as well as first appellate authority have not considered this aspect in its correct perspective as addition of stabilizers and repacking and relabeling subsequent to such stirring, is as per the requirement of various specifications of the purchasers, hence the test of manufacture needs to be applied and deeming provisions in chapter 28/29, will apply, and it has to be held that there is manufacturing. It is his submission that appellant had filed various evidences which were not considered by the lower authorities. It is his further submission that the demands have been confirmed under rule 16 of Central Excise Rules, 2002 and is not sustainable as Rule 16 is in respect of the activity of manufacturing of finished goods cleared from the factory premises and the judgment of the Apex Court in the case of Johnson & Johnson Limited, which has been relied upon by the first appellate authority is distinguishable as appellant is not undertaking only the activity of relabeling; it is his submission that credit cannot be denied when the duty paid on the goods cleared subsequently as manufactured product, is the law settled by the Tribunal in the case of Hikal Ltd. vs. CCE Raigad [2017(346) ELT 316 (Tri.-Mumbai)].

3. Ld. DR reiterates the findings of the lower authorities and submits that Chapter Note 9 of chapter 28 is not applicable in the case in hand as during the relevant period, the chapter note 9 contemplates of labelling and relabeling of containers and repacking from bulk packs retail packs or adoption of any other treatment to render the product marketable to the

customer shall amount to manufacture. It is his submission that the demands raised and confirmed in these appeals are in respect of Hydrogen Peroxide imported in 65 Kgs and 30 Kg containers which were only relabelled and cleared as manufactured product.

4. On careful consideration of the submissions made, we find that the show cause notice is issued for reversal of CENVAT credit availed as customs duty (CVD) paid on the imported Hydrogen Peroxide in 65 Kg and 35 Kg containers. It is the case of the appellant that they are undertaking the activity of addition of stabilizers, stirring the Hydrogen Peroxide and relabeling the said containers as their own product, is an activity recognised as a manufacture as per chapter note 9 of chapter 28 during the period in question i.e. April 2007 to March 2008; also submits that rule 16 cannot be invoked for demand of reversal of CENVAT credit.

5. We find no merits in the arguments raised by Ld. Counsel and we find that during the period in question, the chapter note 9 of chapter 28 reads as under.

> *"Labelling or relabelling of containers and repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the customer shall amount to manufacture."*

6. It can be seen from the above reproduced chapter note the activity would amount to manufacture if labelling or relabelling of the containers are undertaken after repacking from bulk packs. In the case in hand it is undisputed that Hydrogen Peroxide imported in 65 Kgs and 30 Kg containers were relabelled after adding stabilizers and stirring the Hydrogen Peroxide as their own product. The activity of repacking from bulk pack to retail packs has not taken place in the case in hand, hence chapter note 9 of Chapter 28 is not applicable. If that be so, the imported Hydrogen Peroxide cleared as their own products, needs to be held as removal of inputs as such. It is undisputed that confirmation of demand is in respect of the difference in CENVAT credit availed and duty liability discharged on Hydrogen Peroxide as a manufactured product. We find that the first appellate authority was correct in following the ratio laid down by Hon'ble Apex Court in the case of Johnson & Johnson Limited [2005(188)E.L.T. 467 (S.C)] to hold against the appellant. Further, reliance placed by Ld. Counsel on the judgment of Ajinkya Enterprises will also not carry the case of appellant any further, as in that case Hon'ble High Court was considering the fact that the appellant has paid more duty on the goods cleared as manufactured goods than the CENVAT credit availed. As already recorded, in the case in hand, appellant has paid less duty than the CENVAT credit availed on Hydrogen Peroxide cleared as manufactured

product. We do not find any reason to interfere in such an order and hold that the said orders are correct and legal.

7. Impugned orders are upheld and appeals stand rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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