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

Appeal No.	Appellant(s)	Respondent(s)	Order-in-Original No.
E/684/2009	Global Adsorbents Pvt Ltd	CCCE & ST, Hyderabad-I	8/2009 (CE) – Commr. dated 29.04.2009 passed by Commissioner, Customs & Central Excise, Hyderabad - I
E/827/2009	CCCE & ST, Hyderabad-I	Global Adsorbents Pvt Ltd	-do-

Appearance

Shri B. Venugopal, Advocate for the Appellant.

Shri M. Chandra Bose, Addl. Commissioner/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: 23.05.2018
Date of Decision: 19.07.2018

FINAL ORDER No. A/30732 & 30733/2018

[Order per: M.V. Ravindran]

1. The Appeal No.E/684/2009 is listed today for disposal. This appeal is directed against the Order-in-Original No.8/2009-CE-Commr. dated 29.04.2009. When this matter was called out, learned Counsel submits that identical issue of the very same appellant is in Appeal No.E/827/2009. We called for the records from the Registry and on perusal of the same, we find that in Appeal No.E/827/2009, Revenue

has preferred an appeal against the very same Order-in-Original. Accordingly, we take up both the appeals for disposal by a common order.

2. The relevant facts that arise for consideration are the appellant herein, during the period 2004-2005 to 2007-2008 was alleged to have not discharged the Central Excise duty on the activated carbon imported by them and repacked from bulk packs to retail packs. It is the case of the department in the show cause notice that such activity would amount to manufacture as per chapter note no. 9 of chapter 38 and demanded, approximately Rs.1.34 Crores and interest thereon and also sought to impose penalties. Appellant contested the show cause notice on merits and on limitation, stating that they had not converted from bulk packs to retail packs to get covered under mischief of chapter note no. 9 of chapter 38 and that extended period cannot be invoked. The adjudicating authority after following due process of law confirmed the demand to the tune of Rs.35,93,990/-, dropping the proceedings in respect of other demands based upon the detailed submissions made before him. The adjudicating authority had also demanded interest and imposed equivalent amount of penalty. Appellant is in appeal against such order of confirmation of Rs.35,93,990/- with interest and equivalent penalty, while the Revenue is aggrieved by dropping of demands raised on other activated carbons.

3. Learned Counsel draws our attention to the facts of the case and also various stock statements produced by them before the lower authorities. It is also his submission that the consignments imported by them clearly indicate that they were in bulk packs and subsequently repacked and majority of the goods were received in retail form and there was no repacking. He submits that adjudicating authority was correct in dropping the demand raised in respect of resale of the goods in retail packs but has erred in confirming the demands of Rs.35,93,990/-. He would rely upon the decision of the Supreme Court in the case of Johnson and Johnson Ltd [2005 (188) ELT 467], Amritlal Chemaux Ltd [2015 (321) ELT 5] for the proposition that there has to be packing and repacking from bulk packs to retail packs. As regards the appeal filed by the Revenue, it is his submission that the appeal is misdirected as there were records to show that clearances of activated carbons were in retail packs which were received or imported.

4. Learned Departmental Representative on the other hand, submits that there is nothing on the record to show that the demands which were confirmed were retail packs and there was no repacking. As regards the demands dropped by the adjudicating authority, it is submitted that the adjudicating authority has erred in only considering the submissions made by the appellant herein that there was no repacking but they were sold in retail. It is his submission that the said amount also needs to be confirmed.

5. On careful consideration of the submissions made by both sides, we find that the issue is in a limited scope as to whether Central Excise duty needs to be paid on the quantity of the goods which were cleared by the appellant and whether they have to be considered as manufactured products as per chapter note no.9 of chapter 38. In order to appreciate the entire issue, we reproduce the said chapter note no. 9 of chapter 38, which is as under:

> *"In relation to products of this chapter (other than products of heading 3808), labeling or re-labeling of containers and re-packing from bulk pack to retail packs or the adoption of any other process to render the product marketable amounts to manufacture."*

6. There is no dispute as to the fact that the goods imported or purchased by the appellant fall under chapter 38. The above reproduced chapter note no. 9 of chapter 38, if it read as it is, it would mean that labeling or re-labeling of containers and repacking from bulk packs to retail packs would amount to manufacture. In the case in hand, it is undisputed that confirmation of demands is on the goods which were received in 50 Kgs pack and subsequently repacked into smaller packs. It is seen from the Order-in-Original that the adjudicating authority has specifically recorded that appellant had manipulated various purchase documents which were produced during personal hearing, to show that they have received the goods in retail packs. No satisfactory explanation is put forth by the appellant before us on this point except to state that there is nothing on record to show that there was manipulation. In our view, if the appellant is

undertaking manipulation of documents to prove his case before the adjudicating authority, it has to be held that confirmation of demand so raised are correct and that ratio of the various decisions of the Supreme Court will not be applicable in the case in hand.

7. As regards the appeal filed by the Revenue, we find that the adjudicating authority has recorded a factual finding that the appellant had received the activated carbons from the suppliers in retail packs only and he sold the same in the said retail packs only. This factual finding for dropping the demands other than the amount confirmed is not effectively controverted by the Revenue in their appeal. In our view, in the absence of any evidence to show that there was packing or repacking from bulk packs to retail packs, the demands dropped by the adjudicating authority is correct. To that extent, we find that the appeal of the Revenue does not merit acceptance.

8. In view of the foregoing, appeal filed by the Revenue is rejected and the appeal filed by appellant/assessee is also rejected.

(Pronounced in the open Court on 19.07.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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