CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Appeal No. E/100/2007

(Arising out of Order-in-Original No. 08/2006 dt.30.10.2006 passed by CCCE & ST, Hyderabad - IV)

Wockhardt Ltd ….. **Appellant(s)**

Vs.

CCCE & ST, Hyderabad - IV ….. **Respondent(s)**

Appearance
Shri Jitender Motwani, Advocate for the Appellant.
Shri V.R. Pavan Kumar, 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: 31.01.2019
Date of Decision: 31.01.2019

FINAL ORDER No. A/30158/2019

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Original No. 08/2006 dated 30.10.2006.

2. The relevant facts that arise for consideration are the appellant herein was supplying bulk formulations to M/s Gland Pharma Ltd classifying the same under specific heading and claiming exemption from payment of duty. Such clearances of bulk was consumed by M/s Gland Pharma Ltd (main noticee and main appellant) repack them to formulation and clear them claiming exemption. Revenue authorities were of the view that the formulations merit classification under different heading and not as claimed by the appellant and that such formulations are taxable. Proceedings were

initiated wherein the appellant was also issued a show cause notice for imposition of penalties.

3. After hearing both sides, we find that the impugned order imposing penalties on the appellant needs to be set aside as the entire case of the revenue was that the appellant had supplied goods which are not exempted, an issue which has been settled by the Tribunal-Bombay bench in the appellant's own case holding that the said goods cleared by the appellant herein are not taxable. If that be so, the entire edifice of the department's case falls down like a pack of cards. Further, we also note that the case of the said M/s Gland Pharma Ltd has been heard and the orders are pronounced that the demands are not sustainable on the question of limitation. If the demands are not sustainable on M/s Gland Pharma Ltd and no penalties are imposable on them, in our view, appellant herein cannot be visited with any penalties. Accordingly, we hold that the impugned order imposing penalties on the appellant is unsustainable and liable to be set aside and we do so.

4. The impugned order is set aside and the appeal is allowed.

(Operative Part of this order was pronounced in the Open Court
On conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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