IN THE CUSTOMS, EXCISE AND SERVECE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI
COURT NO. IV

APPEAL NO. E/561/09

(Arising out of Order-in-Appeal No. KKS/(28)28/MI/2009 dated 31.03.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.)

M/s The Phoenix Mills Ltd. Appellant

Vs.

Commissioner of Central Excise, Mumbai-I Respondent

Appearance:

Shri Prakash Shah, Advocate for Appellant
Shri D.S. Chavan, Superintendent (A.R.) for Respondent

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBER (TECHNICAL)

Date of Hearing: 24.01.2018
Date of Decision: 24.01.2018

ORDER NO. **A/86465 / 2018**

Per: Ramesh Nair:

The issue involved in the present case is that whether the refund claim of excise duty paid on the printing paste is hit by unjust enrichment.

2. Shri Prakash Shah, Learned Counsel appearing on behalf of the appellant submits that the identical issue is settled in the appellant's own case in the appeal No. E/1452/06-Mum by this Tribunal order

no. A/866/14/SMB/C-IV dated 17.04.2014 wherein it was held that firstly the bar of unjust enrichment is not applicable and secondly when the goods are duty-free, the provisions of Central Excise Act is not applicable in the facts of the case.

3. Shri D.S. Chavan, Learned Superintendent (A.R.) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both sides and perusal of records, we find that the refund has arisen from payment of duty on printing paste on insistence of department that process of printing paste is amount to manufacture. However it was finally held that the activity does not amount to manufacture. Accordingly, the duty paid by the appellant became refundable. The refund was rejected on the ground of unjust enrichment and the same was upheld by the Learned Commissioner (Appeals). We find that on the identical fact in the appellant's own case Tribunal vide order no. A/866/14/SMB/C-IV dated 17.04.2014 passed the following order:-

> *In this case, the appellant is a job worker who is engaged in the activity of processing of unprocessed fabrics. For processing, the appellant is manufacturing printing paste on which he is not paying duty on their job charges. Only on persuasion of the department, the appellant paid duty on the activity of manufacturing of printing paste which used in their job work activity, under protest. Later-on it was held that the activity of manufacturing of printing paste does not amounts to manufacture therefore, duty is not payable at all. In the circumstance, when the goods are duty-free therefore, the provisions of Central Excise Act, 1944 are not applicable as held by the Hon'ble High Court of Bombay in the case of Biochem Pharmaceuticals (supra). When the provisions of*

Central Excise are not applicable in that case bar of unjust enrichment is also not applicable. Therefore, relying on the decision of Biochem Pharmaceuticals (supra), I hold that in this case bar of unjust enrichment is not applicable. With these observations the impugned order is set aside and the appeal is allowed with consequential relief, if any."

In view of the above order, the issue is no longer *res integra* particularly in the facts of the case. Accordingly, following the above order of this Tribunal, we set aside the impugned order and allow the appeal with a consequential relief, if any, in accordance with law.

(Operative portion of the order pronounced in open Court)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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