IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/460/2008

(Arising out of Order-in-Appeal No. PIII/PAP/123/07 dated 29.1.2008 passed by Commissioner of Central Excise (Appeals), Pune-III)

Resource Engineering Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Pune-III **Respondent**

Appearance:

None for appellant
Shri N.N. Prabhudesai, Superintendent (AR), for respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 22.1.2018
Date of Decision: 11.5.2018

ORDER NO. **A/86356/2018**

Per: Ramesh Nair

This appeal has been filed by the Appellant against Order-in-Appeal dt. 29.01.2008 passed by the Commissioner (Appeals), Pune – III. The brief facts of the case are that the Appellants are engaged in manufacture of 'Plate Heat Exchangers' affixed with brand name 'SWEP' and 'Traps' with brand name 'RIFOX'. They were availing benefit of SSI Exemption Notification No. 8/2003 – CE dt. 01.03.2003. They were issued nine show cause notices denying benefit of SSI exemption on the ground that the said brand name is not owned by them. The demand was confirmed by the adjudicating authority. They filed an appeal before the Commissioner (Appeals) who vide Order-in-Appeal No. PIII/BBP/140 – 141/06 dt. 31.08.2006 dropped the demand on the goods bearing brand name 'SWEP', however remanded the case back to the adjudicating authority to calculate the demand on goods bearing brand name 'RIFOX' as the duty demand made in SCN was combined one. The adjudicating authority following the said Order-in-Appeal vide order dt. 20.09.2007 recalculated the duty on goods bearing brand name 'RIFOX'. The Appellant being aggrieved by the said order filed appeal before the Commissioner (Appeals) contending that they were manufacturing goods under brand name 'RIFOX – India'. The Commissioner (Appeals) vide the impugned order rejected the appeal on the ground that since the Order-in-Appeal dt. 31.08.2006 denying SSI Exemption and ordering requantification of duty has not been challenged therefore the appeal against the confirmation of demand by the adjudicating authority is not maintainable. He accordingly rejected the appeal. Hence the present appeal by the Appellants.

2. None appeared for the Appellant. Heard Shri N.N. Prabhudesai, ld Superintendent (AR) for the revenue.

3. We find that the Appellate Commissioner vide his order dt. 31.08.2006 had denied the SSI exemption on the goods bearing brand name 'Rifox' and had sent the case back to the adjudicating authority only for limited purpose i.e to compute the demand on the goods bearing said brand name. The said order of Commissioner (Appeals) denying SSI Exemption to goods bearing brand name 'RIFOX' was not challenged by the Appellant before CESTAT and has thus attained finality. After quantification of demand and passing of the order by the adjudicating authority as directed by the Commissioner (Appeals), the Appellant filed appeal before Commissioner (Appeals) on the ground that they are manufacturing goods bearing brand name 'Rifox India' and not 'Refox'. We find that the Commissioner (Appeals) has rightly rejected the appeal filed by the Appellant on the ground that the Appellant should have approached the CESTAT against order-in-appeal dt. 31.08.2006. He also held that the Appellant in previous round of proceedings before the Commissioner (Appeals) nowhere stated that they used brand name 'Rifox India' and the evidence produced by them before him is afterthought. We are in agreement with the above reasoning adopted by the Appellate Commissioner and do not find any infirmity in the impugned order. Once the Appellant chose not to file appeal against Order-in-Appeal dt. 31.08.2006 when the case was decided against them and the matter was remanded to the adjudicating authority only for limited purpose of

recalculation of demand, they cannot challenge the merits in appeal before Commissioner (Appeals) as the Order-in-appeal has attained finality. Our views are also based upon the judgment of Hon'ble Supreme Court in case of CCE, KANPUR Vs. FLOCK (INDIA) PVT. LTD. 2000 (120) ELT 285 (SC) and UOI Vs. FOOD SPECIALITIES LTD. 1998 (97) ELT 402 (SC).

4. We therefore uphold the impugned order and dismiss the appeal filed by the Appellant.

(Pronounced in court on 11.5.2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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