IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/666/2010

[Arising out of Order-in-Appeal No: SB/13-M/M-IV/10 dated 27th January 2010 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

High Quality Products … ***Appellant***

versus

Commissioner of Central Excise
Mumbai - IV …***Respondent***

Appearance:

Shri Brijesh Pathak, Advocate for appellant

Shri Anil Chaudhary, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

Date of hearing:	**21/01/2019**
Date of decision:	**21/01/2019**

ORDER NO: A/85148 / 2019

Per: C J Mathew

M/s High Quality Products is in appeal against order-in-appeal no. SB/13-M/M-IV/10 dated 27th January 2010 of Commissioner of Central Excise (Appeals), Mumbai Zone – I in which the activity of 'labeling', directed as a condition for clearance of imported goods for home consumption, has been held to be amounting to manufacture and, thereby, confirmed the order of the original authority for recovery of duty of ₹ 33,44,240/- under section 11A of Central Excise Act, 1944, with appropriate interest under section 11AB of Central Excise Act, 1944, besides imposing penalty of like amount under section 11AC of Central Excise Act, 1944.

2. Learned Counsel for appellant submits that shampoo, branded as 'HELSINKI' and imported through Air Cargo Complex, Sahar, Mumbai, and eligible for the benefit of notification no. 44(RE 2000)/1997-2002 dated 24th November 2000 issued under the Foreign Trade (Development and Regulation) Act, 1992 following note 4 in

chapter 33 of the First Schedule to the Central Excise Tariff Act, 1985, cannot deemed to have been manufactured in the light of the decision of the Tribunal in *L'Oreal India Pvt Ltd v. Commissioner of Central Excise, Raigad/Thane [2014 (308) ELT 746 (Tri.Mumbai)]*, which was upheld by the Hon'ble High Court of Bombay *[central excise appeal no. 182 of 2015]*.

3. According to Learned Authorised Representative the reliance placed on the decision in *re L'Oreal India Pvt Ltd* is inappropriate as it pertains to chapter 34, wherein labeling and packing are both necessary conditions for taxability as manufacture, whereas the chapter note invoked in the present dispute mandates either of these activities.

4. Having considered the rival submissions, we find that the issue pertains to excisability of goods before they have been cleared for home consumption. The definition of 'imported goods' under section 2(25) of Customs Act, 1962 makes it amply clear that the goods do not transform from that status till cleared for home consumption. It is not in dispute that the present activity was carried out while the goods were yet categorized as 'imported' and would not, therefore, fall within the purview of Central Excise Act, 1944.

5. Notwithstanding the relevance of definition of 'deemed manufacture' in the two chapters as argued by the Learned Authorised

Representative, the decision in *re L'Oreal India Pvt Ltd* that

> *'8.4 A somewhat similar issue came up for consideration before the Hon'ble Apex Court in the case of Garden Silk Mills Ltd. v. UOI - 1999 (113) E.L.T. 358 (S.C.). One of the issues for consideration in that case was when does the activity of import get complete. The Hon'ble Apex Court held that the import of goods into India would commence when they cross the territorial waters of India but is completed when it become part of the mass of the goods within the country; taxable event is reached when the goods reach the Customs barrier and Bill of Entry for home consumption is filed. The Hon'ble Apex Court in the case of Sneh Enterprises v. CC, New Delhi - 2006 (202) E.L.T. 7 (S.C.) once again considered the question and held as follows :*
>
>> *"Question as to when import of goods is complete would depend upon contract between the parties and/or statute governing the field. It is not a part of common law that the import of goods would be deemed to have been completed only when it passed Customs barrier………………..*
>>
>> *Unless there exists a statutory interdict, common law principle would apply which would mean that import would be complete when goods enter territories of country.*
>>
>> *The taxable event in terms of notification issued under Section 9A of Customs Tariff Act, 1975 is on importation of goods and not when same passes customs barrier.*
>
> *8.5 A plain reading of the above decisions make it clear that so long as the goods remain under the Customs control, they cannot be said to have been imported into India. In the present case both after and prior to 26-2-2010, when the appellant was undertaking the activity of labelling in the Customs bonded warehouse or in a private warehouse on execution of bond and bank guarantee with the Customs, control of the goods remained with the Customs and*

> *importation of goods could not said to have been completed. Therefore, the question of 'manufacture' attracting excise duty liability would not arise at all before the goods are cleared for home consumption. In this view of the matter, the impugned duty demands are clearly unsustainable in law in respect of goods where there was a statutory requirement of affixing the labels. We further observe that as far as the goods contained in packages of more than 10 grams or 10 ml., the CVD duty liability (equivalent to the excise duty) has been discharged on the MRP declared on the packages which is the same both before clearance by the Customs as well as after clearance. Thus, in respect of these goods no additional duty liability would accrue as the basis of valuation and rate of duty remain the same for both customs duty and excise duty. Therefore, demand of excise duty on goods contained in packages more than 10 grams or 10 ml is only an exercise in futility as the entire exercise is revenue neutral. Therefore, demand of excise duty on these goods are clearly and unequivocally unsustainable in law and merits to be set aside.*

excludes application of Central Excise Act, 1944 from such activity, even in private bonded warehouses, from applicability of duties of central excise while goods are yet under customs control.

6. Accordingly, we set aside the impugned order and allow the appeal.

(Pronounced in Court)

(Dr Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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