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

APPEAL NO.E/1364/2011

(Arising out of Order-in-Appeal No.M-V/RKS/17/2011 dated 09/06/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

Servo-Med Industries Pvt. Ltd., : **Appellant**

VS

Commissioner of Central Excise : **Respondent**
Mumbai-V

Appearance

Shri. Neerav Mainkar, Advocate for Appellant
Shri.R.K. Dwivedi, Addl. Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 05/03/2019
Date of decision : 05/03/2019

ORDER NO.A/85497/2019

Per : Dr. D.M. Misra

1. This appeal filed against Order-in-Appeal No.M-V/RKS/17/2011 dated 09/06/2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. The short issue involved in the present appeal is whether the process of sterilization of syringes/needles amounts to manufacture

within the definition of manufacture prescribed under section 2 (f) of Central Excise Act, 1944.

3. Learned Advocate for the appellant submits that in their own case, the Hon'ble Supreme Court decided the issue in their favour reported as *2015 (319) ELT 578 (SC).*

4. Learned AR for the Revenue does not dispute.

5. On the issue of whether the process of sterilization of syrenges/needles results into manufacture within the definition of Section 2 (f) of Central Excise Act, 1984, we find that the Hon'ble Supreme Court observed as follows:

> *30. The added process of sterilization does not mean that such articles are not complete articles in themselves or that the process of sterilization produces a transformation in the original articles leading to new articles known to the market as such. A surgical equipment such as a knife continues to be a surgical knife even after sterilization. If the Department were right, every time such instruments are sterilized, the same surgical instrument is brought forth again and again by way of manufacture and excisable duty is chargeable on the same. This would lead to an absurd result and fly in the face of common sense. If a surgical instrument is being used five times a day, it cannot be said that the same instrument has suffered a process which amounts to manufacture in which case excise duty would be liable to be paid on such instruments five times over on any given day of use. Further, what is to be remembered here is that the disposable syringe and needle in question is a finished product in itself. Sterilization does not lead to any value addition in the said product. All that the process of sterilization does is to remove bacteria which settles on the syringe's and needle's surface, which process does not bring about a transformation of the said articles into something new and different. Such process of removal of foreign matters from a product complete in itself would not amount to manufacture but would only be a process which is for the more convenient use of the said product. In fact, no transformation of the original articles into different articles at all takes place. Neither the character nor the end use of the syringe and needle has changed post-sterilization. The syringe*

and needle retains its essential character as such even after sterilization.

6. Following the aforesaid ratio, we set aside the order and allow the appeal with consequential relief, if any, as per law. Appeal allowed.

(Pronounced and dictated in court)

(P Anjani Kumar)
Member (Technical)

(D.M. Misra)
Member (Judicial)

PJ