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

Appeal No. E/813 and 1176/2009

(Arising out of Order-in-AppealNo. YDB/76/M-III/2009 dated 17.09.2009 and AH/167/M-III/2009 dated 13.04.2009 passed by Commissioner of Central Excise (Appeals), Mumbai III and II respectively)

Biochem Pharmaceutical Industries **Appellant**

Vs.

Commissioner of Central Excise, Mumbai III **Respondent**

Appearance:

ShriN.S. Patel, Advocate for appellant
Shri D.S. Chavan, Supdt. (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing&Decision: 11.10.2018

FINAL ORDER NO. **A/88486-88487 / 2018**

Per: S.K. Mohanty

These appeals are directed against the impugned orders dated 13.04.2009 and 17.09.2009 passed by the learned Commissioner of Central Excise (Appeals), Mumbai.

2. Briefly stated, the facts of the case are that the appellant is engaged in manufacture of pharmaceutical products, falling under Chapter 30 of the Schedule to the Central Excise Tariff Act, 1985 (CETA, 1985). During the disputed period, the appellant had removed the goods to its Bhandup Depot for clearance to their customers. Those goods were removed from the factory on payment of Central Excise duty. Subsequently, some of the removed goods were received back from its

Bhandup depot in the factory for the purpose of re-labeling and re-packing. The goods were received under the cover of challans issued by such depot. On the basis of challans issued by depot, the appellant had availed CENVAT Credit of Central Excise duty indicated therein. Taking of CENVAT Credit on returned goods was disputed by the department on the ground that no documentary evidences including the invoices were produced by the appellant to demonstrate that the goods originally removed from the factory were in fact received from the depot for the purpose of re-labeling / re-processing. Accordingly, after initiation of show cause proceedings, the matter was adjudicated against the appellant in confirming the adjudged demands. On appeal, learned Commissioner (Appeals) also upheld the demands confirmed by the original authority. In support of denial of Cenvat benefit, the learned Commissioner (Appeals) has recorded that no documents were submitted by the appellant to show that the goods received from the factory were in fact returned back from the depot and that on the basis of valid documents, the credit was availed by them.

3. Learned Advocate appearing for the appellant submits that the appellant had maintained the records, showing the particulars of removal of goods from the factory on payment of duty and return of the duty paid goods for labeling / re-labeling purpose. He further submits that since the factory of the appellant was sold to other manufacturer, the appellant is not in a position to submit proper documents at this juncture for verification. However, he submits that necessary documents/records will be produced before the original authority, if the matter is remanded to him.

4. On the other hand, learned D.R. appearing for Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. From the available records, I find that the appellant had enclosed some photo copy of the invoices to show that the goods removed from the factory were received back from the depot for carrying out the process of labeling / re-labeling. However, considering the fact and accepting the submissions of the appellant that it had maintained the records and based on the valid duty paid documents,it had availed the Cenvat credit of the Central Excise duty paid on the goods actually received back in the factory, I am of the view that the matter should be remanded to the original authority for verification of the documents to be produced by the appellant.

7. Therefore, after setting aside the impugned order, the appeals are allowed by way of remand to the original authority for the limited purpose of verification of the documents / records for proper appreciation of the facts that the duty paid goods removed from the factory were actually received back for carrying out the process of labeling / re-labeling. If the original authority is satisfied that the appellant had maintained proper records for that purpose, the Cenvat benefit should be extended to the appellant.

8. In the result, the appeals are allowed by way of remand.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk