CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 1577 of 2011

(Arising out of Order-in-Appeal No. PKS/95/BEL/2010 dated 17th August 2011 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III.)

M/s Softesule Pvt. Ltd. ....Appellant
Plot No. 86-A, LBS Marg, Mulund (W),
Mumbai – 400 080

VERSUS

Commissioner of Central Excise, ...Respondent
Mumbai-III
3rd & 4th Floor, Vardaan Centre,
MIDC, Wagle Industrial Estate,
Thane (West), Mumbai – 400 604

WITH

Excise Appeal No. 1487 of 2012

(Arising out of Order-in-Appeal No. BC/201/M-III/2012-13 dated 31st July 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III.)

M/s Softesule Pvt. Ltd. ....Appellant
Plot No. 86-A, LBS Marg, Mulund (W),
Mumbai – 400 080

VERSUS

Commissioner of Central Excise, ...Respondent
Mumbai-III
3rd & 4th Floor, Vardaan Centre,
MIDC, Wagle Industrial Estate,
Thane (West), Mumbai – 400 604

APPERANCE:

Shri Rajesh Ostwal Advocate for the Appellant
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87156-87157/2019

Date of Hearing: 29.07.2019
Date of Decision: 29.07.2019

Denial of CENVAT credits to the appellant on tax paid for purchase of 'catch covers' a packing material is assailed in this order.

2. Heard from both the sides.

3. The dispute appears to be a recurring one though the issue has been settled time and again by the Tribunal even in the appellant's own case. These two appeals arose from two Orders-in-Appeal, referred above, passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III on 17.08.2011 and 31.07.2012 respectively affirming the adjudication orders passed in respect of duty demand for the period between 2009-2011 made in three show cause notices. Interestingly enough, in one of the appeals the Commissioner observes that appellant had not produced any proof with evidence that value of 'catch covers' has not been included in the assessable value in the physician sample and in the other order dated 17.08.2011 he affirmed the findings of the adjudicating authority on the ground that in his previous order dated 16.08.2010,

he passed similar order in an identical case despite the facts that in series of decisions including those relating to appellant's Company itself, CENVAT credit in respect of such 'catch covers' used for removal of physician samples are held as admissible even if the same is not included in the value of physician samples supplied free of cost. This being the facts on record and the position of law as set through judicial precedent in several decisions including those reported in *2006 (195) ELT 46 (Tri.-Mum) and 2017 (7) TMI 490 – CESTAT, Mumbai* I am of the firm opinion that Appellant is entitled to avail and utilise CENVAT credit on tax paid in respect of packing material i.e. 'catch covers' and the orders of Commissioner (Appeals) are therefore required to be set aside. Hence the order.

ORDER

7. Both the appeals are allowed and the orders passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-III vide Order-in-Appeal Nos. PKS/95/BEL/2010 dated 17th August 2011 and BC/201/M-III/2012-13 dated 31st July 2012 are hereby set aside.

(Dictated & pronounced in open Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad