CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 391 of 2012

(Arising out of Order-in-Appeal No. 58/M-I/2011 dated 12.12.2011 passed by Commissioner of Central Excise (Appeals), Mumbai I)

Godfrdey Philips India Ltd. .....**Appellant**
Sahar Road, Chakala, Andheri (East)
Mumbai – 400 099.

VERSUS

Commissioner of Central Excise Mumbai -I .....**Respondent**
115 New Central Excise Building,
Maharshi Karve Road, Churchgate
Mumbai – 400 020.

Appearance:

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

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85989/2021

Date of Hearing : 11.03.2021
Date of Decision : 11.03.2021

PER : S.K. MOHANTY

This appeal is directed against the impugned order dated 12.12.2001 passed by the learned Commissioner (Appeals), Central Excise, Mumbai.

2. Brief facts of the case are that the appellant herein, is *inter alia,* engaged in manufacture and sale of cigarettes falling under

Chapter 24 of the Central Excise Tariff Act, 1985. As a part of its endeavor to improve and test the quality of cigarettes, the appellant at times purchase the duty paid cigarettes manufactured by its competitors from open market for testing purposes. The competitor's cigarettes so procured are masked covering the competitors brand name, repacked in new pack carrying only a code number and thereafter removed for testing purpose to select panel of discerning smokers without payment of duty. In addition to the above activity, the appellant also cleared its own manufactured cigarettes for testing purpose on payment of appropriate Central Excise duty. Non-payment of duty on removal of competitor's cigarettes was objected to by the department on the ground that the activity undertaken by the appellant on such cigarettes amounts to manufacture in terms of Section 2 (f) of the Central Excise Act, 1944 read with Note 3 to Chapter 24 of the CETA, 1985. Accordingly, the department issued the show cause notice dated 07.10.2009, proposing to demand Central Excise duty of Rs. 6,56,227/- on the competitor's cigarettes cleared for testing purpose during the period from 2004-05 to 2008-09. The SCN was adjudicated vide order dated 18.03.2011 in confirming the adjudged duty demand along with interest proposed for recovery therein. The said order also imposed penalty of equal amount of duty on the appellant under Section 11AC *ibid*. In appeal, the learned Commissioner (Appeals) vide the impugned order dated 12.12.2011 has upheld the original order and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. The learned Advocate appearing for the appellant submitted that the process undertaken by it on the bought-out c*igarettes does not amount to manufacture in terms of Section 2(f) ibid* read with the Chapter Note 3 to Chapter 24 *ibid.* Thus, he contended that in absence of any manufacturing activity undertaken by the appellant in respect of the competitor's cigarettes, duty liability cannot be fastened on the appellant.

4. On the other hand, the learned AR appearing for the Revenue reiterated the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The term "manufacture" has been defined under Section 2(f) *inter alia*, to include any process, incidental or ancillary to the completion of a manufactured product. In this case, the competitor's cigarettes procured by the appellant were masked, covering the manufacturer's brand name, repacked in new pack by putting only a code number for testing purpose to select panel of the smokers. The product emerged after carrying out the activity of masking, putting code number etc. for identification, remained cigarettes only, which were procured by the appellant on payment of appropriate Central Excise duty. Since, there was no change in the name, character and use of the originally bought-out cigarettes, in our view, the process undertaken by the appellant in its factory will not be considered as a manufacturing activity, in order to fall under the scope and ambit of the definition of "manufacture", defined under Section 2(f) *ibid*.

7. In respect of the excisable goods itemized under Chapter 24 of the CETA, 1985, a deeming fiction has been created, which is to the effect that labeling or relabeling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'. It is a settled principle of law that deeming provisions in the statute should be strictly construed as per the plain language used therein and the same cannot be interpreted differently to defeat the legislative intent. In other words, if the process or activities undertaken by the manufacturer falls under the scope defined under such deeming provision, then such process shall be construed as a manufacturing activity in respect of the goods falling under the prescribed chapter. In the case in hand, it is an admitted fact on record that excepting the process of masking and putting code number, the appellant had not undertaken any other activity to

render the resultant product marketable. Thus, it cannot be said that there was involvement of labeling or relabeling of containers. The appellant in this case, had repacked the bought-out cigarettes from one retail pack to another retail pack before it was coded. Such activity also will not be covered under the purview of Chapter Note 3 (supra) inasmuch as there was no repacking from bulk pack to retail pack. The main objective of carrying out the process of masking etc., by the appellant was for the purpose of testing and not for marketing of altogether new cigarattes. Hence, the basic test of marketability envisaged in Note 3 (supra) has not been satisfied. Therefore, we are of the considered view that the requirements of deemed manufacture as per Note 3 to Chapter 24 (supra) are not satisfied in this case, for levy of Central Excise duty on the disputed goods.

8. In view of above discussions, we do not find any merits in the impugned order in support of confirmation of the adjudged demands on the appellant. Thus, by setting aside the impugned order, the appeal is allowed in favour of the appellant.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

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