CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85389 of 2013

(Arising out of Order-in-Appeal No. BR(374-377)MI/2012 dated 22.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s. Godfrey Phillips India Ltd. **Appellant**
VKK Menon Road, Chakala,
Andheri (E), Mumbai 400 099.

Vs.

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

WITH

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AND

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VKK Menon Road, Chakala,
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Vs.

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

Appearance:

Ms. Payal Nahar, Advocate, for the Appellant
Shri Xavier Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 24.02.2023
Date of Decision: 24.02.2023

FINAL ORDER NO. A/85335-85338/2023

PER: SANJIV SRIVASTAVA

These appeals are directed against Order-in-Appeal No. BR(374-377)MI/2012 dated 22.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-I. Commissioner (Appeals) by the impugned order has upheld the orders-in-original as detailed in the table below:-

Sr. No.	Order-in-Original No. & date	Period	Amount involved (Penalty (Rs.))
1	K1/50/2012 dt. 8.6.2012	April 2011 to Dec. 2011	2,70,655/-
2	K1/49/2012 dt. 8.6.2012	October 2010 to March 2011	1,62,987
3	K1/48/2012 dt. 8.6.2012	January 2010 to Sept. 2010	1,03,469
4	K1/44/2012 dt. 8.6.2012	Oct. 2009 to Dec. 2009	32,631/-

2.1 Appellant is engaged in the manufacture of various brands of cigarettes. During the course of manufacture and packing of cigarettes, certain waste arose in the form of cigarette/CT paper, mix pulp, aluminium foil which are unusable and hence rejected. From time to time show cause notices as detailed below have been issued to the appellant demanding duty in respect of these unusable material:-

Sr. No.	Show cause notice No. & date
1.	V(Adj)4-10/KI/GIP/2012 dated 17.4.2012
2	V(Adj)4-50/K-I/11-12 dated 26.9.2011
3	C.Ex/R-I/K-I/GPTL/SCN/26/2010/376 dated 30.11.2010
4	C.Ex/R-IV/K-I/GPTL/23/2010/336 dated 9.11.2010

2.2 These show cause notices were adjudicated as per the orders-in-original referred in para 1 above and appeals against the same have been dismissed by the impugned order.

3.1 We have heard Ms. Payal Nahar, Advocate for the appellant and Shri Xavier Mascarenhas, Superintendent, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that the issue involved in the present case is no longer res integra and in their own case the matter has been decided by the Tribunal vide order reported at [2016 (2) TMI 253 – CESTAT MUMBAI]. Accordingly she submits that the appeal be considered in the light of the above decision.

3.3 Learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 We find that the issue is no longer res integra. In the case of International Tobacco Co. Ltd. [2003 (10) TMI 171 – CESTAT NEW DELHI], the Tribunal has held as follows:-

*"**4.** We have considered the submissions of both the sides. There is force in the submissions of the learned Advocate that no process of manufacture has been taken by them so as to attract the Central Excise duty on such waste of the paper arising during the course of manufacture of the cigarettes. The Revenue has not controverted the contention of the learned Advocate for the appellants that there is no provisions in Cenvat Credit Rules, 2001 providing for payment of duty on waste and scrap, which has arisen during the manufacture of the finished product. Such a provision had existed in the erstwhile Rule 57F of the Central Excise Rules, 1944. In view of this, the impugned order is not sustainable. Accordingly, we set aside the order and allow the appeal."*

4.3 This judgment has been followed by the Allahabad Bench of the Tribunal in the case of International Tobacco Co. Ltd. vide final order No. 72918/2018 dated 26.12.2018.

4.4 In the case of appellant, following the above order, Tribunal has vide order reported at [2016 (2) TMI 253 – CESTAT MUMBAI] held as follows:-

"6. The learned counsel for the appellant submits that the decisions cited above squarely cover the case of the appellant and the Revenue has not been able to prove otherwise. The Revenue has also not been able to prove otherwise. The Revenue has also not been able to establish as to how the said decisions are not applicable in the present case. In this regard, we wish to reproduce para 4 of the judgment in the case of International Tobacco Co. Ltd. (supra), where the Tribunal has observed as under:-

"4. ………."

5.1 The facts being completely identical, following the decision of the Tribunal in appellant's own case, the impugned order needs to be set aside and we order accordingly.

5.2 Appeals are allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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