CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 1682 of 2012

(Arising out of Order-in-Appeal No. BR/81/M-V/2012 dated 19.10.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I.)

M/s. Triumph Purified Water Industries ....Appellant
3E, Laxmi Industrial Estate,
Off. New Link Road, Andheri (W)
Mumbai – 400 053.

VERSUS

Commissioner of Central Excise, Mumbai-V ....Respondent
5th Floor, Utpad Shulk Bhavan,
Plot No. C-24, Block 'E',
Bandra-Kurla Complex,
Bandra (E), Mumbai – 400 051.

APPERANCE:

Ms. Manasi Patil. Advocate for the Appellant

Shri Xavier R. Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85443/2023

Date of Hearing: 10.02.2023
Date of Decision: 10.02.2023

PER: DR. SUVENDU KUMAR PATI

Issue to be decided in this appeal is confined to the legality of simultaneous availment of SSI exemption benefit under Notification No. 8/2003-CE dated 01.03.2003 and CENVAT Credit in respect of its branded goods 'KENT' manufactured by the Assessee and cleared by it as well as goods 'HELLO' 'AQUA GLACIER' and 'COOL ROYALE' processed by it as job worker and cleared under the brand names of others against which duty had been paid and CENVAT Credit had been availed.

2. Factual backdrop of the case, in a nutshell, is that Appellant is a registered Central Excise Assessee engaged in the manufacture of excisable goods namely 'KENT' Packaged Drinking Water falling under Chapter Sub-Heading No. 22019090 of the Central Excise Tariff Act and had been clearing the same without payment of duty by availing SSI exemption covered under Notification No. 8/2003-CE dated 01.03.2003. Simultaneously, it had been manufacturing Packaged Drinking Water for other brands namely 'HELLO' of M/s. Hello Mineral Water Private Limited; 'AQUA GLACIER' of M/s. DJ Industries and 'COOL ROYALE' of M/s. Cool Spring Beverage Private Limited, which had been clearing on payment of Excise duty in full and also availing CENVAT Credit on the duties paid on inputs. Such simultaneous availment of exemption Notification and CENVAT Credit for its own branded products and branded products of others respectively, Appellant was put to show-cause notice proposing recovery of Central Excise duty aggregating Rs 13,75,510/- for the period from October, 2007 to May, 2008 alongwith demand for interest, both under Section 11A and Section 11AB of the Central Excise Act, 1944 respectively as well as penalty under Rule, 25 of the Central Excise Rules, 2002. Matter was adjudicated upon and duty demand alongwith applicable interest and equal penalty were confirmed against the Appellant who preferred an appeal before the Commissioner of Central Excise (Appeals), Mumbai Zone-I that yielded no fruitful result. Legality of the order of confirmation of

such duty demand, interest and equal penalty by the Commissioner (Appeals) is assailed before this Forum.

3. During the course of hearing of the appeal learned Counsel for the Appellant Ms. Manasi Patil, in citing decision of this Tribunal passed in appeal No. E/368/2011 with 2:1 majority, submitted that the issue is no more *res integra* since the majority view of this Tribunal is not contrary to such simultaneous availment, as decided in that appeal in respect of another Appellant M/s. Cologics Systems Pvt. Ltd. (Order dated 02.12.2019) case for the period between February, 2009 to August, 2009 and such a finding was based on the decision of the Hon'ble Supreme Court passed in the case of *Commissioner of Central Excise, Chennai Vs. Nebulae Health Care Ltd.* reported in *2015 (325) ELT 431 (SC)*, for which the order passed by the Commissioner (Appeals) is unsustainable in law and facts. She also placed her reliance to the amendment introduced to Para 2(iii) of the Notification No. 8/2003-CE to further support her stand.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. Xavier R. Mascarenhas argued in support the reasoning and rationality of the order passed by the Commissioner (Appeals) and submitted that by the time order was passed by the Commissioner (Appeals) on 07.05.2013 this *Nebulae Health Care Ltd.* judgment was not pronounced and the same order of Commissioner (Appeals) was based on the ratio of the decision of the *Commissioner of Central Excise, Ahemdabad Vs. Ramesh Food Products* reported in *2004*

(174) ELT 310 (SC) etc. applicable during the relevant period, for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. We have heard the submissions from both the sides and perused the case record. At the outset we made it clear that law is not static and it changes with the changing need of time. The judgment of the Hon'ble Supreme Court, in view of operation of Article 141 of the Constitution of India, is the law of land. In the said *Nebulae Health Care Ltd.* judgement at para 17, while distinguishing other judgments including *Ramesh Food Products cited supra,* it was held as hereunder:

> *"17. A holistic reading of the Notification, in the light of the other paragraphs, brings into focus the overall scheme. It, inter alia, provides that the clearances bearing the brand name or trade name of third parties which are ineligible for grant of this exemption, for the purposes of determining aggregate value of clearances for home consumption, are not to be included. These Notifications also make it clear that the exemption contained therein is not to apply to the specified goods bearing a brand name or trade name, whether registered or not, of any person, except under certain circumstances specifically stipulated therein. The Notifications also clarify that for the purpose of these Notifications, where the goods manufactured by a manufacturer bear brand name or trade name (whether registered or not) of any manufacturer of trade, they shall not be deemed to have been manufactured by such other manufacturer or trade. Reading of the aforesaid provisions in the Notifications unambiguously points out that for the purposes of availing the benefit of Notification by an SSI Unit, the clearances for home consumption only are to be taken into consideration, except in those cases where it is clearly provided otherwise. For this purpose, clearances bearing the brand name or trade name of third parties are concerned, they are kept outside the scheme inasmuch as: (a) they are not to be included for the purposes of*

determining the aggregate value of the clearances for home consumption; and (b) such products bearing brand names or trade names of third parties, even if manufactured by the SSI Unit, are not eligible for any exemption and excise duty thereupon has to be paid. Once we understand the scheme of the Notifications in the aforesaid perspective, which according to us is the only manner in which it has to be understood, it becomes apparent that so far as manufacture of branded goods of third party on job work basis by the SSI Unit is concerned, they are to be dealt with differently in the sense that they do not come within the ambit of exemption on which normally excise duty, as per the provisions of the Act, is payable. As a sequitur, it also follows that once excise duty is paid by the manufacturer on such branded goods manufactured, the brand name whereof belongs to another person, on job work basis, the SSI Unit would be entitled to Cenvat/Modvat credit on the inputs which were used for manufacture of such goods as on those inputs also excise duty was paid. To put it otherwise, these branded goods manufactured by the SSI Units meant for third parties are regulated by the normal provisions of excise law and will have no bearing or relevance insofar as availing the benefit of those exemption notifications in respect of its own products manufactured by the SSI Units is concerned."

Basing on the same judgment findings of this Tribunal in M/s. Cologics Systems Pvt. Ltd. was that Assessee can avail SSI benefit for its own branded procucts and also CENVAT Credit on inputs used in the manufacture of branded goods of others cleared on payment of duty. Further, in the meanwhile Notification No. 8/2003-CE has undergone amendment w.e.f. 11.02.2009 by way of addition of proviso to para 2(iii) that reads:

"Provided that nothing contained in this clause shall apply to the inputs used in the manufacture of specified goods bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4."

The period under dispute in this appeal is before introduction of such an amended provision in February, 2009 but going by the entire text of the Notification, it can be said that the same is clarificatory in nature, that can be applied from the day of its inception, as has been held by this Tribunal in the case of *Vaibhav Acqua Fresh Ltd. Vs. Commissioner of Central Excise, Mumbai-II* reported in *2009 (242) E.L.T. 144 (Tri. - Mumbai)* We are, therefore, of the considered view that having regard to the judicial precedent set by the Hon'ble Supreme Court in *Nebulae Health Care Ltd.* *vis-a-vis* insertion of proviso into the Notification w.e.f. 11.02.2009 that clarified the notification further, Appellant is entitled to the SSI exemption available under Notification No. 8/2003-CE for clearance of its branded product and also entitled to avail CENVAT Credit on clearance of branded products of others cleared through payment of duty. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I *vide* Order-in-Appeal No. BR/81/M-V/2012 dated 19.10.2012 is hereby set aside with consequential relief.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad