CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Miscellaneous Application No. 86172 of 2022
(On behalf of Appellant)
In

Excise Appeal No. 88089 of 2013

(Arising out of Order-in-Appeal No. PIII/RP/131/2013/354 dated 07.05.2013 passed by the Commissioner of Central Excise (Appeals-III), Pune.)

M/s. Cologicx Systems Pvt. Ltd. ....Appellant
35, 2nd Floor, Electronic Co-operative
Industrial Estate, Pune Satara Road,
Pune – 411 009

VERSUS

Commissioner of Customs, Excise & ....Respondent
Service Tax, Pune-III
ICE House, 41-A, Sasson Road,
Opposite Wadia College,
Pune- 411 001

APPERANCE:

Shri Manoj Deshpande, Chartered Accountant 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/85451/2023

Date of Hearing: 09.02.2023
Date of Decision: 09.02.2023

PER: DR. SUVENDU KUMAR PATI

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

2. Facts of the case, in brief, is that Appellant is a manufacturer of excisable goods namely Energy Meter and Customised Software falling under CSH No. 90283010 & 85238020 and it was availing SSI exemption under Notification No. 8/2003-CE dated 01.03.2003, as amended. During the scrutiny ER-I returns, it was observed that from the period September, 2009 to March, 2010 Appellant had cleared its own branded goods as well as branded goods of others and it had paid duty at full rate on the clearances of others branded goods as well as availed CENVAT Credits on duty paid on inputs/raw-materials used in the manufacture of their own branded goods and branded goods manufactured for others without maintaining separate account for exempted and dutiable finished goods. In the process, duty of Rs.13,50,411/- was calculated to be payable for the aforesaid period. Appellant was duly noticed to show cause, matter was adjudicated upon and duty demand under Section 11A alongwith applicable interest under Section 11AB of the Central Excise Act, 1944 with penalty of Rs.10,000/- under Rule 25 of the Central Excise Rules, 2002 was imposed that subsequently got confirmed by the Commissioner (Appeals) while deciding the appeal preferred by the Appellant challenging legality of the said adjudication order. The order passed by the Commissioner (Appeals) is assailed before this Forum.

3. During the course of hearing of the appeal, Learned Counsel for the Appellant Mr. Manoj Deshpande, 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 s*ince the majority view of this Tribunal had already decided the same in respect of the Appellant's own case for the period between February, 2009 to August, 2009 and this appeal is filed against confirmation of duty demand made for the subsequent period from September, 2009 to March, 2010 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.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. Xavier R. Mascarenhas argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and submitted that by the time of order passed by the Commissioner (Appeals) on 07.05.2013 this *Nebulae Health Care Ltd.* judgment was not pronounced for which the order of Commissioner (Appeals) that was based on the judicial precedent available during the relevant period needs no interference by the Tribunal.

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 and 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 *Commissioner of Central Excise, Ahemdabad Vs. Ramesh Food Products* reported in *2004 (174) ELT 310 (SC)* 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 Appellant's own case was that Assessee can avail SSI benefit and also CENVAT Credit on inputs used in the manufacture of branded goods 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 covered in this Notification. 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, 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. Miscellaneous application for early hearing is allowed. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals-III), Pune *vide* Order-in-Appeal No. PIII/RP/131/2013/354 dated 07.05.2013 is hereby set aside with consequential relief, if any.

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad