CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 85755 OF 2013

[Arising out of Order-in-Appeal No: BR/418/M-I/2012 dated 20th November 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Bombay Art Packaging
Plot No. C-160, MIDC, TTC Industrial,
Thane Belapur Road, Pawane, Navi Mumbai - 400705 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – I
115 New Central Excise Building, Maharshi Karve Road,
Churchgate, Mumbai - 400020 ***…Respondent***

APPEARANCE:

Shri M H Sukheja, Advocate for the appellant

Shri Xavier R Mascarenhas, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/ 86093/2023

DATE OF HEARING: 08/06/2023
DATE OF DECISION: 08/06/2023

PER: C J MATHEW

The short-point in this appeal of M/s Bombay Art Packaging, disputing the finding of the first appellate authority in order[1] rejecting their appeal, against order of the adjudicating authority holding them

[1] [order-in-appeal no. BR/418/M-I/2012 dated 20th November 2012]

ineligible for the benefit of exemption under notification no. 8/2003-CE dated 1st March 2003 pertaining to small scale industrial units, is the retrospective application of clarifying *Explanation* incorporated in the said notification with effect from 24th March 2011. Demand of ₹ 6,70,647/- for the period from 1st June 2006 to 30th November 2008 under section 11A of Central Excise Act, 1944, along with applicable interest, and penalty of like amount under section 11AC of Central Excise Act, 1944 rests solely upon the non-exclusion from coverage of relaxation in restrictions in use of the brand name till 24th March 2011. The plea of the appellant herein before the lower authorities that the exclusion was intended to exist from the beginning, as apparent from the nature of activity of theirs, was rejected on the ground that any incorporation in notification can only have prospective intent.

2. Learned Counsel for the appellant submits that they are in the manufacture of labels for other manufacturers and that it is in the nature of their trade to execute such work that does do not constitute affixing the brandname of another entity on their product. It is also contended by him that such an exercise in demand of duty would be tantamount to holding that it was the intent of the Central Government, for a time, to deny small scale industries the business of printing of labels that is normally outsourced by the bigger manufacturers. Furthermore, he contends that there is no product

emerging therefrom other than label on which the words/ representation required by their customers are printed and, therefore, it is incorrect to consider such activity to be affixing of brand name not permitted by the notification no. 8/2003-CE dated 1st March 2003. It is also submitted by him that it was owing to such erroneous interpretation that the Central Government was compelled to incorporate

> *'Explanation – For the removal of doubts, it is hereby clarified that "packing material' includes labels of all kinds.'*

in paragraph 4(e) of the impugned notification with effect from 24th March 2011.

3. According to Learned Authorised Representative, the decision of the Hon'ble Supreme Court in *L R Brothers Indo Flora Ltd. Commissioner of Central Excise [2020 (373) ELT 721 (SC)]* has clearly laid down that all laws are prospective and retrospective application of the impugned amendment is not correct in law. Likewise, reliance was placed on the decision of the Hon'ble High Court of Bombay in *Cipla Ltd v. Commissioner of Central Excise, Goa [2019 (28) GSTL 427 (Bom)]* holding that amendment of rule 14 of CENVAT Credit Rules, 2004 has only prospective effect.

4. There is no doubt that prospective application of law is a general principle but the impugned notification was amended to

incorporate an *Explanation* for ‘packing materials’ to include such labels as are impugned in the dispute before us. The case law cited by Learned Authorised Representative arises from the claim that charging provisions, insofar as the clearance by export oriented units are concerned, is prospective and that of the Hon’ble High Court of Bombay pertains to recovery of duty short-paid, not-paid or short-levied or not levied, in those, the factual circumstances were relevant and we find no parallel here.

5. In terms of the activity to be undertaken, it is unescapable that the brand name of another entity is itself printed on a product to be delivered to that very entity which hardly amounts to affixing of the brand name on a product of the appellant. Besides, the intent of the Central Government is manifest in the clarification, incorporated as an *Explanation* rather than as addition to existing exclusions. The sole implication of this factual matrix and the nature of the amendment is that it is intended to apply retrospectively.

6. Accordingly, the impugned order is set aside and the appeal allowed.

(Operative Part of the Order Pronounced in the Open Court on 8th June 2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*