CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 86961 of 2014

(Arising out of Order-in-Appeal No. PD/48/MI/2014 dated 10.03.2014 passed by the Commissioner of Central Excise (Appeals-I), Mumbai Zone-I.)

M/s. Godfrey Phillips (I) Ltd. ....Appellant
Plot No. 19, TTC Industrial Area,
Thane Belapur Road, Rabale,
Thane – 400 701

VERSUS

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

APPERANCE:

Shri Rajesh Ostwal, Advocate with
Shri Saurabh Bhise, Advocate for the Appellant

Shri P.K. Acharya, Supdt. Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85073/2024

Date of Hearing: 09.01.2024
Date of Decision: 08.02.2024

PER: DR. SUVENDU KUMAR PATI

Confirmation of excise duty of ₹2,45,726/- with interest and equal penalty on waste and scrap namely paper/paper boards, corrugated boxes, aluminium foils etc., arose during manufacturing of cigarettes for the period from the January 2012 to December 2012, by the Commissioner (Appeals) *vide* his above referred order is assailed in this appeal.

2. Facts of the case, in brief, is that Appellant manufactures various brands of cigarettes falling under Chapter Sub-Heading 2402. During the course of manufacturing as well as packing of cigarettes, Appellant uses inputs like paper/paper boards, corrugated box, aluminium foil etc. In the process some inputs get deformed, damaged, torn, soiled for which they were to be rejected as unusable. Stretching Explanation to Section 2(d) of Central Excise Act, 1944 Respondent-Department demanded duty on it *vide* show-cause notice dated 12.09.2012 and 20.02.2013. Matter was adjudicated and the demand alongwith interest and penalty as purposed in the show-cause notice got confirmed in the Order-in-Original passed on 31.07.2013. Appellant's unsuccessful attempt before the Commissioner of Central Excise (Appeals-I), Mumbai Zone-I has brought the dispute to the present forum.

3. During the course of hearing of the appeal, learned Counsel for the Appellant Mr. Rajesh Ostwal submitted that the issue is no more *res integra* in view of this Tribunal's decisions passed in Appellant's own case for other periods. In citing judgment of this Tribunal reported in *2016 (2) TMI 253 CESTAT Mumbai,* and final Order No. *A/85335-85338/2023 dated 24.02.2023* of CESTAT Mumbai in Appellant's own case, in which following *International Tobacco Co. Limited* judgment the issue has been decided by way of setting aside the order passed by the Commissioner (Appeals) he argued that no process of manufacture had taken place so as to attract Central

Excise duty on such waste and scrap arose during course of manufacturing of cigarettes. In refuting the stand of the Department he submitted that Explanation added to Section 2(d) of the Central Excise Act, 1944 in the year 2008, on which Department had placed it reliance, cannot stand alone to determine marketability of the product that is sold for consideration unless essential test for dutiability of goods namely "manufacturer" is fulfilled and waste and scrap can never be the result of any skill, labour or manipulation that would establish the process of manufacture, for which the order passed by the Commissioner (Appeals) is unsustainable both in law and facts. He placed his reliance on the judgment of the Hon'ble Supreme Court passed in the case of *CCE Vs. West Coast Industrial Gases Ltd.* reported in *2003 (155) ELT 11 (SC)* that had confirmed setting aside of duty demand on waste of the nature of corrugated box and also placed his reliance on other judgment on similar issues namely *VVF Ltd. Vs. CCE* reported in *2009 (248) ELT 593 (T), CCE Vs. Ballarpur Industries Ltd.* reported in *2014 (300) ELT 181 (P & H), CCE Vs. VST Industries Ltd.* reported in *2005 (190) ELT 459 (T), CCE Vs. Deeps Tools Pvt. Ltd.* reported in *2010 (255) ELT 159 (T), CCE Vs. WIMCO Ltd.* reported in *2008 (230) ELT 106 (T)* to strengthen his stand.

4. In response to such submissions, learned Departmental Representative Mr. Saurabh Bhise has argued in support of the reasoning and rationality of the order passed by the Commissioner (Appeals) and pointed out that after Section 2(d) was introduced in

the Central Excise Act, CBEC *vide* its Circular No. 904/24/2009-CX dated 28.10.2009 had clarified that with amendment in Section 2(d), bagasse, aluminium/zinc dross and other such products termed as waste, residue or refuse which arise during the course of manufacture and are capable of being sold for consideration would be excisable goods and chargeable to payment of excise duty, for which the order passed by the Commissioner (Appeals) needs no interference by this Tribunal.

5. We have heard on the submissions and perused the case record. At the outset it is to be noted that Section 2(d) provides the definition of excisable goods and its explanation on "goods" includes any article, material or substance which is capable of being bought or sold for a consideration and such goods shall be deemed to be marketable but the starting lines of the Central Excise Act, 1944 says that "the Act is passed to consolidate and amend the law relating to Central Duties of Excise as it was expedient to consolidate and amend the law relating to Central Duty of Excise on goods manufactured or produced in certain parts of India". Taking both the provisions together, it has been consistently held by the Court of law that to levy duty of Excise, both manufacturing and marketability conditions are required to be fulfilled and the same view continues even after proviso is introduced in Section 2(d). It has also been consistently held even by the Hon'ble Supreme Court that waste and scrap, as referred in *West Coast Industrial Gases Ltd.* (Res.) judgment *cited supra* and also in respect of bagasse and other waste

products [*DSCL Sugar Ltd.* case reported in *2015 (322) ELT 769 (SC)]* are not excisable articles on which duty liability can be fastened. Moreover, in the Appellant's own case duty on those waste products including unusable, rejected, deformed torn, wet, paper/paper boards, corrugated boxes, aluminium foils etc. was held to be not leviable and the same order being passed in 2016 have attained finality since not been appeal against. We, therefore, pass the following order in order to maintain consistency and predictability to the order passed by this Tribunal and to carry forward the judicial precedent set by it.

<u>THE ORDER</u>

6. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals-I), Mumbai Zone-I *vide* Order-in-Appeal No. PD/48/MI/2014 dated 10.03.2014 is hereby set aside with consequential relief, if any.

(Order pronounced in the open court on 08.02.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad