# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
# <u>MUMBAI</u>

REGIONAL BENCH

**Excise Appeal No. 86914 of 2014**

(Arising out of Order-in-Appeal No. PD/49/MI/2014 dated 10.03.2014 passed by the Commissioner of Central Excise (Appeals-I), Mumbai-I.)

**M/s. Godfrey Phillips India Ltd.** ........Appellant
**Plot No. 19, TTC Industrial Area,**
**Thane Belapur Road, Rabale,**
**Thane, Maharashtra – 400 701**

*VERSUS*

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

**<u>APPERANCE:</u>**

Shri Rajesh Ostwal, Advocate for the Appellant

Shri Xavier P.M. Mascarenhas, 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. 85281/2024**

Date of Hearing: 14.02.2024
Date of Decision: 11.03.2024

**PER: DR. SUVENDU KUMAR PATI**

Confirmation of demand of Central Excise duty of ₹10,08,885/- under Section 11A of the Central Excise Act, 1944 alongwith recovery of interest under Section 11AA of the said Act charged on 50 cases of cigarettes, received back in the factory from Appellant's hired private bonded warehouse after customer Indian Navy expressed its inability to purchase the same, is assailed in this appeal.

2. Facts of the case, in a nutshell, is that Appellant is a cigarette manufacturer who also supply cigarettes for consumption on board in

vessels of the Indian Navi and Indian Coast Guard. The said clearance of cigarettes to the Indian Navy/Coast Guard was covered under exemption Notification No. 64/95-CE dated 16.03.1995. One consignment of 60 CFCs of cigarettes was ordered for supply by the Indian Navy/Coast Guard and the cigarettes were cleared from the factory to the private bonded warehouse at Chennai. As usual, "For I.N./C.G. Ships Only" was printed on those cigarettes which could not be used for domestic sale. Subsequently *vide* request letter dated 22/12/2010 Indian Navy informed the Appellant that they were unable to buy 50 out of 60CFCs cigarettes as agreed by them. Appellant had got no option but to take it back to the factory from its private bonded warehouse and sought permission from the Respondent-Department for destruction of the same under Rule 21 of the Central Excise Rules, 2002 since those cigarettes were not marketable but remission request was rejected by the Commissioner *vide* Order-in-Original dated 11.10.2012, that was assailed by the Appellant in another appeal preferred before this Tribunal. In the meanwhile, show cause-cum-demand notice dated 15.03.2013 was served on the Appellant that got confirmed by an adjudication order passed by the Additional Commissioner *vide* Order-in-Original No. 10/MI/2013-14 dated 29.08.2013, on the sole ground that application for remission of duty on the said 50CFCs of cigarettes had been rejected *vide* Order-in-Original dated 11.10.2012. Appellant's unsuccessful attempt before the Commissioner (Appeals) against such confirmation of demand by the Additional Commissioner 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 order rejecting application for remission of duty passed by the Commissioner had been set aside by this Tribunal *vide* final order No. 85772/2023 dated 20.02.2023 and consequently there remains no other ground to proceed with the confirmation of the duty demand that was based solely on the ground that application for remission of duty was rejected by the Commissioner. In citing copy of the said order he requested for acceptance of his appeal by way of setting aside of the demand and interest confirmed on the Appellant.

3. Learned Authorised Representative for the Respondent-Department on the other hand, reiterates the findings of the Commissioner (Appeals) and sought for no interference by this Tribunal in the order passed by the Commissioner (Appeals), since issue concerning remission on similar ground in other related issue is still pending before the Larger Bench.

4. We have gone through the case record and the order passed by this Tribunal on 20.02.2023, in which I was also a Member, We took note of the said reference made to the Larger Bench of the issue but the order of this Tribunal was passed on the basis of decision of the Hon'ble High Court of Gujarat in Tax Appeal No. 912 of 2012 decided on 25.07.2014, concerning which dispute a reference is also made in para 30 of the Commissioner’s order rejecting remission application. We have, therefore, got no hesitation to come to the conclusion that when the application for

remission of duty was ultimately allowed at the appellate stage by the Tribunal, demand of duty on those 50 CFCs cases of cigarette is unsustainable both in law and facts. Hence the order.

## THE ORDER

5. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals-I), Mumbai-I *vide* Order-in-Appeal No. PD/49/MI/2014 dated 10.03.2014 is hereby set aside with consequential relief of refund of duty that was paid on protest.

(Order pronounced in the open court on 11.03.2024)

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

**(Anil G. Shakkarwar)**
**Member (Technical)**

*Prasad*