CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 89077 of 2013

(Arising out of Order-in-Appeal No. SDK/131/BEL/2013-14 dated 14.08.2023 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s Jindal Drugs Limited **.... Appellant**
Plot No. 111, New Chemical Zone,
MIDC Taloja, Taluka – Panvel,
Raigad – 410 208

Versus

Commissioner of Central Excise, Belapur **.... Respondent**
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai – 400 614

Appearance:

Shri Mihir Mehta a/w Shri Ananta Khandait, Advocates for the Appellant

Shri Xavier Mascarenhas, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85586/2024

Date of Hearing: 10.06.2024
Date of Decision: 10.06.2024

PER: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged in the manufacture of 'Cocoa Butter', falling under Central Excise Tariff item 1804 00 00 of the First Schedule to the Central Excise Tariff Act, 1985. A deeming fiction was created in the Note No.3 of Chapter 18, to the effect that "*in relation to products of this chapter, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to 'manufacture'*." Since, the appellants were affixing the labels in the packets containing the excisable goods procured by them, they considered themselves as the manufacturer of excisable goods in terms of Note 3 above. Upon subjective satisfaction that the treatment of labelling provided by the appellants to the goods procured by them would amount to manufacture, the jurisdictional Central Excise authority had issued the registration certificate, recognizing the appellant as a manufacturer of excisable goods in respect of their manufacturing unit, located at Taloja. Appellants had one more manufacturing unit at Jammu & Kashmir. During the disputed period, the other unit located at Jammu & Kashmir had supplied Cocoa Butter to the appellants under the cover of central excise duty paid invoices. The appellants had availed CENVAT Credit of central excise duty paid by the Jammu & Kashmir unit. Taking of CENVAT Credit by the appellants was objected to by the Department on the ground that the activity undertaken by them in their factory at Taloja, should not be considered as 'manufacture' inasmuch as simply by putting the label in the container would not change the nomenclature or the characteristics of the product in order to be considered as a distinct product in market having new name or identity. On such premise, the Department had initiated show-cause proceedings, seeking for denial of CENVAT Credit of central excise duty availed on the Cocoa butter received from the Jammu & Kashmir unit as well as sourced by way of import. The matter arising out of the show-cause notice dated 9.10.2012 was adjudicated by the Department and against such adjudication, the matter went to the Tribunal and the Tribunal vide Final Order No. A/ 914/15/EB dated 16.04.2015 has allowed the appeal in favour of the appellants, holding that labeling of the container/packet of Cocoa butter would amount to manufacture. Feeling aggrieved with the said final order dated 17.08.2021 passed by the Tribunal, the Department had filed the Civil Appeal before the Hon'ble Supreme Court. The Civil Appeal No. 1121 of 2016 was disposed of by the Hon'ble Supreme Court vide judgment dated 30.04.2024, in dismissing the same and upholding the order of the Tribunal.

2. Since, the appellants were not able to utilize the CENVAT Credit on the Cocoa butter exported by them, they had filed periodical refund applications before the jurisdictional Central Excise authority under Rule 5 of the CENVAT Credit Rules, 2004 claiming refund of accumulated CENVAT Credit available in the Books of Account. By taking recourse to the earlier show-cause notice dated 09.10.2012, the Department vide the show-cause notice dated 23.10.2012 and 10.01.2013 had sought to deny the refund claim, on the ground that taking of CENVAT Credit on Cocoa butter is not proper inasmuch as there is no manufacturing activities involved and as such, the said product cannot be considered as an input for removal in as it is condition from the factory premises. The matter arising out of the show-cause notices was adjudicated upon by the Assistant Commissioner of Central Excise, Navi Mumbai vide order dated 28.02.2013, wherein refund claim applications filed by the appellants were rejected. On an appeal against the said adjudication order, the learned Commissioner (Appeals) vide the impugned order dated 14.08.2013 has upheld the original order and rejected the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have filed the present appeal before the Tribunal.

3. Heard both sides and perused the case records.

4. In the present case, the appellants had procured Cocoa butter from their another unit located at Jammu & Kashmir. The said goods were removed from the factory on payment of appropriate duty, under the cover of Central excise invoices. On receipt of the said goods in the manufacturing facility at Taloja, the appellants had affixed a new label, mentioning the details about the manufacturing unit etc. Insofar as manufacturing of goods under Central Excise Act, 1944 is concerned, Note 3 of Chapter 18of the First Schedule to the Central Excise Tariff read with clause (iii) of Section 2(f) ibid, has created the deeming fiction that labeling or relabeling of the container should be considered as a manufacturing activity. Since the appellants had affixed a new label to the packet/container at their Taloja factory, such affixation of label should tantamount to deemed manufacture and as such, the appellants were entitled to avail CENVAT Credit of the central excise duty paid by their Jammu & Kashmir unit. We find that the issue arising out of the show-cause notice dated 09.10.2012 with regard to irregular availment of CENVAT Credit was the subject matter of the dispute before various judicial forums and the Tribunal vide order dated 16.04.2015 had settled the dispute, holding that labeling of container/packets would amount to manufacture in terms of Note 3 to Chapter 18 of the Central Excise Tariff Act. Civil appeal filed by the Revenue was also dismissed by the Hon'ble Supreme Court vide judgment dated 30.04.2024. Thus, with regard to the issue that the activity of labeling or relabeling is amounting to manufacture is no more open for any debate.

5. Since the appellants' taking of CENVAT Credit of the duty amount paid by the Jammu & Kashmir unit was in conformity with Rule 3 of the CENVAT Credit Rules, 2004, and that the refund has

been claimed in terms of Rule 5 ibid, owing to the reason of exportation of goods, such refund of CENVAT Credit shall not be denied to the appellants. The Department, in the present case,since had not specifically alleged that the appellants did not comply with the requirements or the procedures laid down under Rule 5 ibid, rejection of refund claims provided under the statute cannot be whittled down and such benefit should be available to the appellants inasmuch as the said rule deals with the provision of refund claim of the accumulated Cenvat credit, and such entitlement for refund cannot be denied, by taking recourse to other rules provided in the Cenvat statute.

6. In view of the foregoing discussions, we do not find any merits in the impugned order, in so far as it has upheld the original order in rejecting the refund applications filed by the appellant under Rule 5 ibid. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha