CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86727 OF 2015

[Arising out of Order-in-Appeal No: CD/316/Bel/2015 dated 13th February 2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone– II.]

Chemtron Science Laboratories Pvt Ltd
EL-47, Electronics Zone, TTC Industrial Area
Mahape, Navi Mumbai - 400710 … ***Appellant***

versus

Commissioner of Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai - 400614 ***…Respondent***

APPEARANCE:

Shri Sunil Agarwal, Advocate for the appellant

Shri PK Acharya, Superintendent (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86953/2025

DATE OF HEARING: 18/06/2025
DATE OF DECISION: 04/12/2025

PER: C J MATHEW

A limited issue, with outcome of fastening liability of duties of central excise amounting to ₹ 4,45,297 under section 11A of Central Excise

Act, 1944, along with applicable interest, and imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 for having cleared goods deemed to have been manufactured between March 2008 and March 2012 without complying with the levy obligations, is at the core of this appeal of M/s Chemtron Science Laboratories Pvt Ltd challenging order[1] of Commissioner of Central Excise (Appeals), Mumbai-III. The appellant herein was involved in the business of supplying gas that, from bigger cylinders, was filled in smaller cylinders and it would appear that note 9 to chapter 28 of Schedule to Central Excise Tariff Act, 1985 deemed coverage for the levy of duties of central excise upon

> *'labelling or re-labelling of containers or re-packing from bulk packs to retail packs or adoption of any other treatment to render the product marketable to consumer shall amount to manufacture.'*

2. According to the lower authorities, such packing as undertaken by the appellant sufficed for duty liability to arise from 'deemed manufacture' and that, in any case, the bottling in smaller packs was essential for rendering the product to be marketable and, thereby, within the scope of 'manufacture', as defined in section 2 (f) of Central Excise Act, 1944.

3. Learned Counsel for the appellant placed reliance on the decision of the Tribunal in *Nestlé India Ltd v. Commissioner of Central Excise, Chandigarh-II [2011 (270) ELT 575 (Tri-Del)]* which dealt extensively with notes to chapter deeming specified activity to be manufacture and

[1] [order-in-appeal no. CD/316/BEL/2015 dated 13th February 2013]

with reference to note 11 to chapter 29 of Central Excise Tariff Act, 1985.

4. Learned Authorized Representative harped upon the facts of the case and the findings reported in the impugned order. He placed reliance on the decision of the Tribunal, in *Abdos Trading Co Pvt Ltd v. Commissioner of Central Excise, Kolkata-II [2013 (290) ELT 467 (Tri-Kolkata)]*, holding that

> *'18. We agree with the contention of the ld. A.R. that the expression "bulk pack" cannot be read by dissecting the expression into "bulk" and "pack". It is to be read as a whole and in contrast to the meaning of "retail pack", as the activity of converting/transferring the contents of a "bulk pack" into "retail packs", is the decisive factor, in determining whether the activity falls within the scope of Chapter Note 10 of Chapter 28 of CETA, 1985. Once, it is a "bulk pack", then the quantity out to be definite and measured according to the packing in which it is placed. In case of solid, it is back in standard size of packings and in case of liquid and gas, it takes shape of the containers. No specified quantity could be assigned or earmarked to understand the meaning of "bulk pack" and "retail pack". The said connotation are to be ascertained by delving into the facts and circumstances of each case. For example, in case of soda ash quantity of 75/50 kgs. in bags, may be considered as "bulk packs" in contrast to the quantity of 500 gms/1 kg. But, in case of spices, for example, cardamom powder, 1 kg could be considered as "bulk pack" and 1 gm/2 gm packs could be treated as "retail packs". Therefore, in each case, it has to be determined as to what constitute a "bulk pack" and a "retail pack". Needless to mention, the activity of transferring from "bulk pack" to "retail pack" is undertaken to enhance the marketability. Therefore, the argument that the said Chapter Note is attracted only to "bulk packs" and not to "standard pack", is unacceptable.'*

and, to press for marketability as a determinant, reliance was placed on the finding of the Tribunal in *re Nestlé India Ltd* that

> *'92…… it is settled law that in order to consider the product be marketable, the same should not be a transient product but it should be a product commercially identifiable one. The fact that the product is not actually marketed is not relevant and even if there is only one customer to purchase or consume the product then such product can be considered as a marketable product. Undisputedly, as already seen above, the product in question is clearly commercially identifiable one. It is captively consumed by the appellants. Similar type of the product was also purchased by the appellants and consumed by the appellants for the same purpose for which the product in question is consumed. The product in question has shelf life. Considering all this aspect, it cannot be denied that the provisions of the Note in question are squarely applicable to the product of the appellants. Rather, the vitamins mix produced by the appellants satisfies all the necessary attributes to make it a marketable product.*
>
> *xxxx*
>
> *94. The fallout of the above discussion is that the points formulated for consideration in these appeals in terms of the direction by the Hon'ble Supreme Court in the remand order in relation to the process undertaken by the appellants are to be answered in the affirmative. The product vitamin mix or intermixture of vitamin emerges out of the process of mixing of vitamins and it results in the manufacture of commercially recognised product different from the ingredients used in the process of mixing having independent characteristics, identity and use. Taking into consideration the facts and circumstances of the case, the activity undertaken by the assessees has to be held as amounting to manufacture conceptually and by applying first principle as well as by application of twin test of*

manufacturing and marketability. The activity undertaken by the appellants is covered by the provisions of Section 2 (f) of the Central Excise Act, 1944 read with Chapter Note No. 11 of Chapter 29 of the Central Excise Tariff Act, 1985…. The expression "any other treatment" is not confined to treatment in the nature adopting the attributes of the marketability to product having absolutely no marketability prior to such treatment. The said expression includes any treatment including the treatment adopted to acquire of those attributes of marketability which the product did not possess prior to such treatment even though the product might have possessed other attributes of marketability. It is immaterial whether the product which are to be treated for rendering the marketable were having any attribute of marketability or not prior to the adoption of such treatment. The expression "retail pack" does not relate to retail customer. It refers to the circumstances in which the retail pack is made available to consumer who may procure such goods even in bulk.'

5. From the records, it is apparent that the appellant manufactures 'gas' of different kinds and discharges applicable duty liability on the same. It also appears that these 'gas' are stored in appropriate containers in the factory of manufacture and that the products are sold to customers by measure which, while being taken delivery of, are filled in containers supplied by the customers. It is that activity which has been deemed to be manufacture in terms of the impugned chapter note and, on facts, contested by the appellant.

6. The definition of manufacture, and consequent excisability was broadened, in relation to specific chapters of Schedule to Central Excise Tariff Act, 1985 and in conformity with the deeming portion to include

certain activities rendered in the product that, without changing the characteristics of the product, altered it to such extent as to enable levy of tax yet again. It should be noted that, in the scheme of credit coupled with the scheme of non-taxability of the product emanating at the previous stage subject to liability of the final product, there is essential neutrality insofar as all these activities are undertaken in the same factory. It would appear that the intent of 'deemed manufacture' sought to levy duty on the specified activity being undertaken independently and autonomously. The decisions cited on behalf of both sides sets the ground for resolution of the dispute solely on the facts and circumstances of the case.

7. That the purported 're-packing' was not designed as a continuous activity of the appellant and was contingent upon customer-driven preference for bottling the gas in their own containers, which bore no marking of the appellant, is significant to the chargeability of duty on deemed manufacture. It is equally significant that this aspect has been glossed over by the lower authorities and, in fact, the cited judgements do not bear similarity with the facts of the present dispute. The bottling of the product in containers provided by the customers is akin to providing transport for removal of goods; that 'gas' could not be carried on the normal modes of transport without being contained in appropriate container renders the refilling to be beyond the activities undertaken by the appellant even if the means by which 'gas' are filled in the containers so provided belong to the appellant. In a broader sense,

it would appear that this activity occurs after production of excisable goods.

8. In the facts and circumstances of the dispute, the conclusions supra render the demand confirmed by the original authority, and upheld by the first appellate authority, to be without authority of law and, therefore, to set aside. The appeal is, consequently, allowed.

(Order pronounced in the open court on 04/12/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*