CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

Regional Bench - Court No. – I

Excise Appeal No. 1906 of 2012
with Application No. E/CROSS/9/2012

(Arising out of Order-in-Original No.43/2012 (C.Ex.) dt.30.03.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Commissioner of Central Excise & Service Tax, Guntur **.....Appellant**
PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

VERSUS

Safe Parentals Ltd
Gollapadu, Guntur District,
Andhra Pradesh – 522 408 **.....Respondent**

and

Excise Appeal No. 1962 of 2012
with Application No. E/CROSS/10/2012

(Arising out of Order-in-Original No.42/2012 (C.Ex.) (Commr) dt.30.03.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Guntur)

Commissioner of Central Excise & Service Tax, Guntur **.....Appellant**
PB No.331, CR Building, Kannavarithota,
Guntur, Andhra Pradesh – 522 004

VERSUS

Safe Formulations Ltd
Gollapadu, Guntur District,
Andhra Pradesh – 522 408 **.....Respondent**

Appearance:-

Shri K. Raji Reddy & Shri V.R. Pavan Kumar, ARs for the Appellant.
Shri Narendra Dave & Shri Ch. Sumanth, Advocates for the Respondents.

Coram: **HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)**
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30200-30201/2025

Date of Hearing: 16.06.2025
Date of Decision: 16.06.2025

[Order per: A.K. JYOTISHI]

There is a preliminary objection by the department that since they are not the aggrieved party in the appeal filed by the department, they could not have filed cross objections. The learned Advocate for the Respondents submits that in the event of the same, their cross objections may be treated as counter.

2. The department is in appeal against the OIO No.43/2012 dt.30.03.2012 passed by the Commissioner, whereby, he has partly confirmed the demand against M/s Safe Parentals Ltd (hereinafter referred to as the Respondent), vide Appeal No.E/1906/2012. They are also in appeal against the OIO No.42/2012 dt.30.03.2012, whereby, part demand was confirmed against M/s Safe Formulations Ltd (hereinafter referred to as the Respondent), vide Appeal No.E/1962/2012.

3. The issue, in brief, is interpretation of Notification No.08/2003-CE dt.01.03.2003. The department felt that the respondents had not included the clearance value of certain goods cleared under the brand names of other as those clearances were otherwise eligible for said exemption and therefore, not to be excluded for computation of aggregate clearance. The Adjudicating Authority, after considering the submissions and various details furnished by the noticee, has recalculated the demand after interpreting the provisions of notification and thereafter confirmed the demand of only Rs.3,62,157/-, as against the total demand of Rs.65,72,779/-.

4. While the respondents came before the Tribunal against the order of confirmation of the demand where the Tribunal, vide its order dt.04.07.2013, inter alia, held that the reliance of the appellant (present respondent) on the decision of the Tribunal taking a view that duty paid on branded goods prior to crossing the limit of the first clearance should also be taken into account are relevant holding that the same should have been considered. It was also, inter alia, held that the appellants are entitled for deduction of duty already paid by them on branded goods and observing that their claim that the total duty paid by them for the year was more than what is liable to be paid, which is calculated on the basis of correct interpretation of Notification No. 08/2003, was required to be examined by

the original adjudicating authority since the claim is correct. It was categorically held that except for the quantum, which is to be arrived at by verifying the amount paid and payable, they did not find any other issue in the appeal. Admittedly, against the said order of the Tribunal, neither the present respondent nor the department has gone in appeal. It is also informed that the said remand proceeding is currently pending before the original adjudicating authority.

5. On the other hand, learned AR points out that on merit there is clear-cut observation and the Tribunal has held that the method of calculation adopted by the adjudicating authority is correct and they have come in appeal for dropping the demand beyond the normal period. However, they also agreed that they were entitled to claim adjustment of duty already paid, if any.

6. Heard both sides and perused the records. Since both the appeals are having same issue, we take up both the appeals together for disposal.

7. We find that the short question for determination is whether the computation of demand of duty by the department is correct in the light of interpretation of notification 08/2003 or otherwise, as also whether there is scope for invocation of extended period, as sought by the department or otherwise. On the issue of computation of demand of duty, we find that the issue has already attained finality in terms of Tribunal's Order dt.04.07.2013 and neither party has challenged the mode of computation of demand, which is based on interpretation adopted by the department. However, as far as the issue of adjustment is concerned, it is still in their favour and if there is any further adjustment required in terms of even this appeal, the same principle has to be adopted by the adjudicating authority.

8. On the issue of limitation, we find that Commissioner has referred to the details furnished by the respondents in their ER-1s where clearly they have provided clearance value in respect of other branded goods cleared to different brand name owners. We have perused the SCN, where the only ground for invoking extended period was non-disclosure of clearance value in respect of clearances to category 3 i.e., other brand name owners. Therefore, it is obvious that in the absence of any other cogent and positive evidence on record, this ground has already been considered and it was

found that they have already disclosed these details to department in their ER-1s. We, therefore, find that on the ground of limitation, department would not succeed and order of the adjudicating authority has to be upheld.

9. As far as the merit is concerned, we find the matter has already been referred to the original adjudicating authority and therefore, to that extent, we remand the matter back for deciding the quantum of duty and as held in the Tribunal's Order dt.04.07.2013, whatever duty they have already paid will have to be adjusted against the total demand, if any. Moreover, since the scope of extended period is not available in the facts of the case, the mandatory penalty is also not imposable in the matter. The adjudicating authority shall work out the correct demand in the aforesaid manner.

10. Appeals are disposed of by way of remand with the above observations.

(Dictated and pronounced in the Open Court)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

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