IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 143 OF 2014

The Commissioner of Central Excise	**}**	**Appellant**
versus		
Paper Products Ltd.	**}**	**Respondents**

Mr. Y. R. Mishra with Mr. S. D. Bhosale for the Appellant.

Mr. Prakash Shah with Mr. Prasad Paranjape and Mr. Jas Sanghavi i/b. M/s. PDS Legal for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.

DATED :- FEBRUARY 27, 2015

P.C. :-

This Appeal by the Revenue challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), West Zonal Bench at Mumbai in Appeal No. E/21/2009. By the impugned order dated 12th November, 2013, the Bench of the Tribunal allowed the Appeal of the Respondent Assessee.

2) The facts in the background of which this Appeal of the Assessee was allowed are very few and simple. The claim of the Assessee is that it is holding Central Excise Registration. It claims that it is manufacturing packaging material falling under Chapter 39 and other

final products falling under Chapters 47, 48, 74, 76 and 84 of the Central Excise Tariff Act, 1985.

3) The Assessee availed of Cenvat Credit under Rule 3 of the Cenvat Credit Rules, 2004 of duty paid inputs/raw materials and capital goods used in or in relation to the manufacture of the above final products. This credit was utilized for payment of duty at appropriate rate on the clearance of the final products.

4) The Tribunal has, in paras 2, 2.1, 2.2 and 2.3 to 2.5, referred to the entire process undertaken by the Respondent/Assessee. The claim of the Assessee was that what it undertook is manufacture and the activities fall within section 2(f) of the Central Excise Act, 1944. A new commodity wholly marketable and known to the commercial world comes into existence. Therefore, it is entitled to avail of the credit on the inputs and raw material cost. The Revenue thought otherwise and issued show cause notice calling upon the Assessee to reverse the Modvat/Cenvat Credit and that is how sum was demanded and equivalent to the Cenvat Credit.

5) The order passed in that regard by the Commissioner of Central Excise, Mumbai-III was challenged because he held that the Appellant did not manufacture anything. Their activity was held to be

one of lacquering and laminating films. Such a simple and packaging activity does not result in any new product emerging and known to the market. Therefore, relying upon the Judgment of the Hon'ble Supreme Court in the case of *Metlex (I) Pvt. Ltd. vs. Commissioner of Central Excise, New Delhi*, reported in **2004 (165) ELT 129**, the Commissioner confirmed the demand. The Tribunal concluded, on hearing both sides and referring to the factual material and process, that the activity undertaken clearly amounts to manufacture. It has distinguished the Judgment of the Hon'ble Supreme Court by making specific reference to not only the process undertaken by the Assessee, but its activities as a whole. It concluded that the film that the Assessee procures is nothing but a raw material or input on which several processes are undertaken so as to eventually transform it into package material of several shapes, dimensions and sizes. This would distinguish the Judgment of the Hon'ble supreme Court.

6) We have found that the Tribunal's findings are consistent with the factual material placed and the undisputed process or activity undertaken by the unit of the Assessee. Such findings of fact can never be termed as perverse or vitiated by error of law apparent on the face of the record.

7) In the facts and circumstances peculiar to the Assessee, it was held by the Tribunal that the matter does not fall within the tests which are laid down by the Hon'ble Supreme Court in the case of *Metlex (I) Pvt. Ltd.* (supra). That Judgment is clearly distinguishable. Once such is the exercise undertaken by the Tribunal, then, no substantial question of law arises for our determination and consideration in this Appeal. The Appeal is devoid of merits. We are surprised that such an Appeal has been brought by the Revenue. For, once it is the Assessee who admits that what he is doing is manufacture of goods and products which are sold and marketable and known to the market as such. In the circumstances a clear rethink is necessary when blindly some ratio of a Judgment of the Hon'ble Supreme Court and de-hors the factual position is relied upon to file frivolous Appeals. The Appeal is accordingly dismissed. No costs.

(SUNIL P. DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**