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

CENTRAL EXCISE APPEAL NO. 138 OF 2005

The Commissioner of Central Excise	}	Appellant
versus		
M/s. Nicholas Piramal Ltd.	}	Respondent

Ms. P. S. Cardozo with Mr. Vipul A. Bajpayee for the appellant.

Mr. Prakash Shah with Mr. Jas Sanghavi i/b. M/s. PDS Legal for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- OCTOBER 17, 2016

P.C. :-

1. This appeal of the Revenue was admitted on three substantial questions of law. They have been set out in the order passed on 31st January, 2006.

2. It is common ground that the assessee in this case had engaged itself in manufacture of dutiable as well as exempted final products under Chapter Heading 29.36 and 23.02 of the Central Excise Tariff Act, 1985. The goods falling under Chapter Heading 29.36 are chargeable to duty at 16%, whereas, the goods under Chapter Heading 23.02 are chargeable to nil rate of duty.

In the process of manufacture of both these products, a common intermediate product, as set out in para 3.1 of this memo of appeal, is used. Thus, the common input went into manufacture of dutiable as well as exempted final product. The respondent assessee also availed MODVAT Credit on the common inputs and reversed the credit at the rate of 8% at the time of clearance of final products in terms of Rule 57-CC of the Central Excise Rules, 1944 up to 31st January, 2001. Thereafter, the assessee informed that it will not avail the credit on the entire inputs at the time of receipt in the factory and shall avail the proportionate credit on the quantity of the inputs actually consumed in the manufacture of the dutiable final product. There was, once again, a change in mind and the assessee desired to revert back.

3. This step of the respondent/assessee was in view of the tribunal's decision in the case of *Dharamshi Morarji Chemicals vs. Commissioner of Central Excise*[1]. That is how a show cause notice was issued by terming the practice as incorrect and calling upon the assessee to pay duty equivalent to 8% of the value of the final product in terms of Rule 57-AD of the Central Excise Rules, 1944. The demand of Rs.99,78,809/- was raised along with interest.

1 **2001 (44) RLT 411**

4. This demand was confirmed by the order-in-original dated 31st December, 2001. The assessee preferred an appeal before the Commissioner of Central Excise (Appeals) and first appellate authority. The Commissioner allowed that appeal on 11th April, 2002. That is how the Revenue approached the tribunal. The tribunal, in the impugned judgment, merely relied upon the view taken in the case of *Dharamshi Morarji Chemicals* (supra) and some other cases and held that the facts and circumstances being identical, the issue is covered against the Revenue.

5. The Revenue had approached this court in the further appeal, which came to be admitted. In the meanwhile, the Division Bench of this court, in the case of *M/s. Piramal Healthcare Ltd. vs. Commissioner of Central Excise*[2] passed an order on 14th August, 2009 as modified on 27th November, 2009. The court held that the assessee is liable to pay amount equal to 8% or 10% of the total price of the exempted goods as per Rule 6(3)(b) of the CENVAT Credit Rules, 2002. This rule was amended retrospectively by Finance Act of 2010. The Commissioner of Central Excise has given effect to this rule. The assessee sought a review of the order passed by this court by filing Review Petition No. 34 of 2010. That was decided on 14th March, 2012.

2 **Central Excise Appeal No. 9 of 2009**

6. It is now clear from the order passed in the review petition, copy of which is at pages 13 to 15 of the compilation read with the further documents in that compilation, that the arrangement carved out by the assesse has been accepted by the Revenue. In these circumstances, we do not think that the substantial questions of law, on which the appeal was admitted, survive any longer. They stand answered against the Revenue in terms of the order passed by this court and the earlier orders of the tribunal. The appeal is, therefore, dismissed. There would be no order as to costs.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)