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

CENTRAL EXCISE APPEAL NO. 138 OF 2019

The Commissioner Central Excise,
Customs and Service Tax .. Appellant

v/s.

M/s. Hindustan Unilever Ltd. .. Respondent

Mr. Pradeep S. Jetly a/w Mr. J.B. Mishra for the appellant

Mr. Kiran Chavan I/b Cenex Services for the respondent

**CORAM : M.S. SANKLECHA &**
**NITIN JAMDAR, J.J.**

**DATED : 16th AUGUST, 2019**

**P.C.**

1. This appeal under Section 35G of the Central Excise Act, 1944 (Act) challenges the order dated 29th December, 2006 passed by the Central Excise, Customs and Service Tax Appellate Tribunal (Tribunal).

2. The Revenue has urged the following re-framed question of law for our consideration :-

*(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal justified in allowing CENVAT Credit on inputs viz. Shrink Sleeves received from M/s. Paper Products Pvt. Ltd., who classified the inputs under Chapter 39 having 39.20 of the Central Excise Tariff Act, 1985 (Tariff Act) and paid duty thereunder?*

3. The Respondents received '*Shrink Sleeves*' (inputs) from M/s. Paper Products Pvt. Ltd., (supra). These inputs were classified by the supplier under Chapter 39 heading 3920.19 of the Tariff Act, 1985. On the basis of the above classification, M/s. Paper Products Ltd., (supra) collected duty from the Respondents and the Respondents took CENVAT Credit of the duty paid on the inputs in their books. However, the Revenue was of the view that inputs viz. '*Shrink Sleeves*' are not classifiable under Chapter 39 heading 3920.19 of the Tariff Act but are classifiable under Chapter 40 heading 4901.90 of the Tariff Act, 1985. Thus, chargeable to *'Nil'* rate of duty. Therefore, the consequent taking of credit by the Respondent was sought to be denied.

4. The Tribunal by the impugned order dated 29th December, 2006 allowed the Respondent's appeal by taking note of the order of its co-ordinate bench in the case of ***M/s. Paper Products Ltd., v/s.***

***Commissioner of Central Excise 190 ELT 84.*** In the above case, the Tribunal held that '*Shrink Sleeves*' had been correctly declared by M/s. Paper Products Ltd., as classifiable under Chapter 39 heading 3920.19 of the Tariff Act, 1985. Therefore, the '*Shrink Sleeves*' which were inputs of the Respondents are chargeable to duty and not classifiable under Chapter 40 heading 4001.90 of the Tariff Act to attract '*Nil*' rate of duty as urged by the Revenue.

5. Mr. Jetly, learned Counsel for the Revenue, very fairly states that the issue raised by the Revenue herein would no longer survive. This in view of the Revenue's appeal to the Supreme Court from the order of the Tribunal in M/s. Paper Products Ltd., (supra) being dismissed by the Apex Court as reported in 2015 TIOL 230 upholding the classification of the inputs under Chapter 39 of the Tariff Act, 1985 as claimed by M/s. Paper Products Ltd., and not under Chapter 40 of the Tariff Act, 1985 as claimed by the Revenue. In view of the the decision of the Supreme Court, there is no question, much less any substantial question of law, which remains to be resolved.

6. In the above view, as the Revenue is not disputing (in view of the Apex Court's order), the taking of CENVAT Credit on '*Shrink Sleeves*' by

the Respondent, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

7. Accordingly, **Appeal dismissed.**

**(NITIN JAMDAR, J.)** **(M.S. SANKLECHA, J.)**