Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Excise Appeal No. 38 of 2012

[Arising out of Order-in-Appeal No. OIA-117-122/2011-AHD-I-CE/MM/COMMR-A-/AHD dated 22.11.2011 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Ganesh Govindvallabh Joshi .... **Appellant**
Prop. Ganesh Enterprises,
Prabhudas Patel, Plot No. 2,
Master Pump Lane, Danilimda,
AHMEDABAD, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
Central Excise Bhavan,
Nr Panjrapole & Polytechnic,
Ambavadi, Ahmedabad,
Gujarat-380015

APPEARANCE :

Shri J.C. Patel, Advocate for the Appellant
Shri S.K. Shukla, Superintendent for the Respondent

WITH

(i) Excise Appeal No. 39 of 2012 (Ganesh Govindvallabh Joshi)
(ii) Excise Appeal No. 40 of 2012 (Ganesh Govindvallabh Joshi)
(iii) Excise Appeal No. 41 of 2012 (Yogesh Dhariyal)
(iv) Excise Appeal No. 42 of 2012 (Yogesh Dhariyal)
(v) Excise Appeal No. 43 of 2012 (Yogesh Dhariyal)

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. RAJU, MEMBER (TECHNICAL)

FINAL ORDER NO. A/11564-11569 / 2019

DATE OF HEARING/ DECISION: 22.08.2019

RAMESH NAIR :

In the present case, the issue involved is clubbing of clearances of different units and denial of exemption of duty on clubbing.

2. Shri J.C. Patel, Ld. Counsel appearing on behalf of the appellants, at the outset, submits that in the present case, it is a recurring show cause notice for the subsequent period and in the appellant's own case for the

earlier period, this Tribunal, following the decision of this Tribunal in the case of *Dhariyal Chemicals – 2014 (309) ELT 727 (Tri. Ahmd.)* allowed the appeal on the ground that the product manufactured by the appellant itself is not dutiable as the same is classifiable under Chapter 47 as against the Chapter 39 as claimed by the department. He referred to the decision in their own case, passed vide Final Order No. A/12197-12200/2018 dated 22.10.2018. He further submits that this order has been accepted by the department, however on the monitory grounds.

3. Shri S.K. Shukla, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. Considering the submissions made by both sides and perusal of the record, we find that the issue is no more res-integra and settled in the appellant's own case vide order dated 22.10.2018, allowing the appeal holding that goods involved is classifiable under Chapter 47 which does not attract excise duty, as against the claim of the department under Chapter 39. The order has relied upon the earlier decision of this Tribunal in the case of Dhariyal Chemicals – 2014 (309) ELT 722 (Tri. Ahmd.). Accordingly, the identical issue involved in the present case is only for the subsequent period, the ratio of the decision cited above is applicable. Hence, the impugned orders are set-aside and the appeals are allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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