CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO – 3

Excise ORS Application 10123 of 2017

Excise Appeal No. 45 of 2011-DB

(Arising out of OIO No.- 22/DEM/2010 dated 29.08.2010 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Ambica Engg. Works Appellant

G-301, Ratna Apartment, Sun N Step Club Road
Opp. Alok Bungalow, Thaltej
Ahmedabad

-VERSUS-

C.C.E. & S.T., Surat-i Respondent

New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat,
Gujarat
395001

Present For the Appellant : Shri Amish Goyal, C.A.

Present For the Respondent : Shri S.K. Shukla, Supdt.(AR)

CORAM:

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

FINAL ORDER NO. A/ 11705 / 2019

Date of Hearing: 16/07/2019
Date of Decision: 06/09 /2019

RAMESH NAIR

The brief facts of the case are that the appellants were engaged in the manufacture of fabric washing machine in name and description "Relax Drum Washer Machine" falling under chapter 84 of Central Excise Tariff Act, 1984 and the same was cleared by them

(i) under exemption during the period 15/04/2004- 12/08/2007 and
(ii) From 17/08/2007 – 26/01/2008 on payment of concessional rate of duty at the rate of 8.24%(BED 8%+ Ed. Cess @2% of BED+ 1.% H.S. Edu Cess of BED)

By availing benefit of Notification no. 06/2002-CE dated 01.03.2002(as amended) and under notification no. 06/2006-CE dated 01/03/2006(as amended) vide notification no. 06/2007-CE dated 01/03/2007, it was noticed by the department that the "Relax Drums/Conveyer Drying Machine" (refer Sno. 5 of the list specified as specified under Sr. No. 193 of Notification no. 06/2002-C.E. dated 01.03.2002 and Sno. 5 of the list as specified under no. 3 of notification no. 06/2006-C.E. dated 01.03.2006) gives the description of machines as :

(i) Drying Range
(ii) Float Dryer
(iii) Loop Dryer
(iv) Drum Dryer
(v) Jet Dryer
(vi) Rapid Dryer

It was further observed that the machine manufactured by the appellant namely "Relax Drum Washer Machine" is not covered under the notification. Therefore, they were not entitled for the exemption notification. Consequently, the demand of duty by denying the said exemption notification was raised. The adjudicating authority confirmed the demand. Therefore, the present appeal.

3. Shri Anish Goyal, Ld. C.A. appearing on behalf of the appellant at the outset submits that the appellant is not contesting the appeal on merits. However, they have a strong case in their favour on limitation. He submits that the appellant was under the bona fide belief that "Relax drum" covers their product "Relax Drum Washer Machine". He submits that the appellant have obtained the registration. At the time of registration, the detailed verification was conducted by the Jurisdictional Superintendent and submitted his report to Jurisdictional Assistant Commissioner. A copy of the same was obtained under RTI. He submits that as per the said verification report, it was admitted the products declared by the appellant are exempted under notification no. 06/2006 (S.no. 3, list no. 2) dated 01/03/2006. It was also mentioned that Central Excise duty was imposed on the said product vide notification no. 06/2007 dated 01.03.2007. With this detailed verification, it is clear that entire detail regarding the production claiming the exemption notification was well within the knowledge of the department right from the August, 2007, when registration certificate was issued. The Show Cause notice for the period 01.04.2004-28.02.2008 was issued on 06.04.2009 i.e. for normal period of one year. Therefore, the entire demand is time barred. He further submits that the issue was not free from doubt that on the same issue there were cases made out against various parties. The similar issue came before this Tribunal in the case of Accurate Transheat Pvt. Ltd. vs CCE, Surat (supra) wherein this Tribunal vide order no. A/11173-11174/2018 dated 09.02.2018 allowed the appeal on limitations.

3. Shri S.K. Shukla, Ld. Supdt.(AR) appearing on behalf of the Revenue reiterates the findings of the impugned order. He placed reliance on the following judgments:

1. CCE, Surat v/s Bhagyarekha Engineers P Ltd. 2014 (309) ELT 108 (Tri-Ahm.)
2. Shridhar Engineering v/s Commr. 2017 (347) ELT A67 (SC)
3. Shridhar Engineering v/s Commr. 2017 (354) ELT A199 (SC)

4. CCE, Chandigarh-I vs. Mahaan Dairies 2004 (166) ELT 23 (SC)
5. Union of India V/s Rajasthan Spinning & Weaving Mills 2009 (238) ELT 3 (SC)

4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue on merit is settled as the same has been decided in the case of CCE, Surat Vs. Bhagyarekha Engineers P Ltd. (supra) against the assessee and the same was upheld by the Hon'ble Supreme Court. Now the only issue remains to be decided is whether the demand raised by the Revenue is barred by limitation. In this regard, we find that the appellant have heavily relied upon the physical verification report for registration vide F.no. RI Registration/AEW/07-08/Surat dated 30.08.2007 given by Superintendent Range-I Division-3, Surat-I to the Assistant Commissioner. The said verification report is scanned below:

OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE
RANGE – I : DIVISION – III : SURAT – I.

F.No.R.I Registration/AEW/07-08 Surat, dated the 30th August, 2007

To

The Assistant Commissioner,
Central Excise Division – III,
Surat – I.

Sir,

Subject-: Central Excise Verification report in respect of New Registration viz. M/s Ambica Engineering Works, Plot No. A/9-10-11, Behind Chinco Dyeing, Bamroli Gram Panchayat, G.I.D.C. , Pandesara, Surat. Registration No. AABHH9739QXM001. - M.R.

………… ……….

Please refer to your letter F.No.V/13-3/Ambica Engineering Registration /07 dated 9.8.2007 on the above subject.

As per the directions the undersigned along with the Inspector visited the premise of M/s Ambica Engineering Works, Plot No. A/9-10-11, Behind Chinco Dyeing, Bamroli Gram Panchayat, G.I.D.C. , Pandesara, Surat on 27.8.2007.

The factual report in the matter is as under :

(1) The premises are situated at the location mentioned in the application Form .

(2) At the time of visit, Shri Kishorbhai, Authorised person of the unit was available, production of Relay Drum was in process.

(3) The products declared by the unit were exempted vide Notificatio No.6/2006 (Sr. 3 list No.2). The Central Excise Duty on the said product has been imposed vide Notification No. 6/2007-C.E dated 1.3.2007. The Unit was asked to provide details of production clearance value etc. ~~before~~ from the month of March, 2007 to till date but the said details are still awaited.

Sd/-
30/8/07

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(4) Regarding the Ownership of the premises, the unit has submitted only Photo copy of "Possession Receipt" . No other Registered sales Deed in this regard has been produced. As per the said document, the premises is within the possession of Shri Harshadbhai Dhansukhbhai Modi, Proprietor of the unit.

(5) Since the unit is proprietorship concern and as a measure to safeguard the tentative revenue liability, if any, in future the unit was asked the furnish the projection of the business along with his financial status but the said details are still awaited.

30/8/07

SUPERINTENDENT
CENTRAL EXCISE
RANGE – I : DIVISION – III
SURAT – I.

The copy of above report was obtained by the appellant under RTI with a letter no. XIX/01/2011 dated 09/07/2019 almost after 8 years of filing the appeal. It is observed that this letter was not considered by the lower authorities as the same was neither presented nor available at the time of adjudication. Since, only on this letter, by verification report, the Superintendent has mentioned about availing the exemption notification no. 06/07-CE dated 01.03.2007, the appellant's submission is that there is no suppression of fact. Hence, the extended period of will not apply. We are of view that since this vital letter dated 30.08.2007 was not dealt with by the lower authorities, entire matter on limitation needs to be reconsidered by the Adjudicating Authority. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order. The appeal is allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 06.09.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha