CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 11148 of 2018

[Arising out of OIA-RAJ-EXCUS-000-APP-196-198-2017-18 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

M/s Euro Auto Industries **.....Appellant**
Plot No 3369 Gidc Phase 3 Dared
Jamnagar, Gujarat-361004

VERSUS

C.C.E. & S.T.,-Rajkot **.....Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

WITH

Excise Appeal No. 11147 of 2018

[Arising out of OIA-RAJ-EXCUS-000-APP-196-198-2017-18 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

Kiritbhai Khimjibhai Korat **.....Appellant**
C/o.m/s. Axis Alloy Industries.
Plot No. 4708,road No.2, Phase-iii, Dared,
Jamnagar,Gujarat

VERSUS

C.C.E. & S.T., -Rajkot **..Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

AND

Excise Appeal No. 11377 of 2018

[Arising out of OIA-RAJ-EXCUS-000-APP-196-198-2017-18 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT]

M/s Aarbee Power Engineering Ltd. **.....Appellant**
213, Cheeappa Gounder Street, Kattor
Coimbatore, Tamil Nadu,641009

VERSUS

C.C.E. & S.T.,-Rajkot **..Respondent**
Central Excise Bhavan,
Race Course Ring Road...Income Tax Office,
Rajkot, Gujarat-360001

APPEARANCE:
Sh. Rahul Gajera (Advocate) for Appellant
Sh. S.N. Gohil, Superintendent (AR) for Respondent

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

FINAL ORDER NO. A/ 11941-11943 /2019

DATE OF HEARING: 21.08.2019
DATE OF DECISION: 17.10.2019

PER: RAMESH NAIR

The present appeals have been filed by M/s Euro Auto Industries, M/s Aarbee Power Engineering Ltd. and Kiritbhai Kimjibhai, Partner of M/s Axis Alloys Industries against Order-in-appeal No. RAJ-EXCUS-000-APP-196 to 198-2017-18 passed by Commissioner (Appeals), Rajkot. The brief facts of the case are that the Appellant M/s Euro Auto are engaged in manufacture of Tubular batteries falling under chapter sub heading 8506 of the CETA, 1985. They were availing benefit of value based SSI Exemption under Notification No. 8/2003 - CE dt. 01.03.2003. Searches were conducted at factory premises of Appellant leading to seizure of 120 Nos "estore" brand batteries 12-V150, 186 unbranded batteries and screen plates of "estore" brand. Simultaneous searches were also conducted at factory premises of Axis Alloys Industries who during the relevant period were engaged in manufacturing and clearance of lead ingots which is raw material used in manufacture of batteries, factory premises of M/s Patco Plast, Ahmedabad and M/s Power Sales & Services who were trading batteries. Statement of Shaileshbhai Bhandari, Proprietor of M/s Euro Auto was recorded who stated that "Euro Plus" belonged to their firm and another brand "estore" was registered brand of M/s Aarbee Power Engineering Pvt Ltd., Coimbatore and they were selling batteries after affixing their brand. He also stated that they cleared "estore' brand batteries during 2012 – 13 and 2013 – 14 on which SSI exemption was availed statement of Shri Roy P Thomas, Managing Director of M/s Aarbee Power Engineering Pvt. Ltd and Shri Kimjibhai Korat, Partner of M/s Axis Alloy Industries supplying raw material to Appellant was also recorded. M/s Euro were issued show cause notice dt. 22.01.2016 proposing demand of duty of Rs. 19,66,880/- on the ground that they have cleared "estore" brand battery used in invertor which belongs to M/s Aarbee Power Engineering Pvt. Ltd as per Trade Mark Licence Agreement dt. 24.12.2012; they are not eligible for benefit of Notf. No. 8/2013 - CE dt. 01.03.2003 as amended on batteries cleared under brand name of "estore". The Adjudicating authority vide impugned order confirmed demand of Rs. 18,68,989/- and also imposed penalty of Rs. 9,34,495/- against the Appellant Unit. Penalty upon co-appellants was also imposed. The Appellant filed appeal before Commissioner (Appeals), Rajkot who vide Order-in-Appeal No. RAJ-EXCUS – 000-APP-196 to 198-2017-18 dt. 25.01.2008 rejected the appeals. Aggrieved, the appellants have filed present appeals.

2. Shri Rahul Gajera, Ld. Counsel appearing for the Appellants submits that the factory is situated in rural area and therefore even if they are manufacturing goods under brand name of another person, the exemption under notification No. 8/2003 - CE dt. 01.03.2003 is available to them. That the Adjudicating authority has confirmed the demands on the ground that the certificate issued by the Gram Panchayat and Mamlatdar certifying that the unit is situated in Taluka : Jamnagar (Rural) cannot be made basis for extending benefit of notification as Jamnagar (Rural) Taluka has been constituted under Gujarat Land Revenue Code, 1879 which empowers Gujarat Government to constitute a Taluka. That the said village Kansumara is not a rural area but urban area as defined in section 2 (xxix) of Gujarat Town Planning and Urban Development Act, 1976 for the reason that the said village falls within the jurisdiction of Jamnagar Area Development Authority (JADA) which is constituted under the said act with a prime objective to carry out the sustained planned development of the area falling outside the periphery of Jamnagar Municipal Corporation. He submits that the authority has failed to appreciate that the unit is situated in rural area which is evident from the Para 5H of the Notification itself and certificates issued by Revenue officer having jurisdiction over the land. According to Para 5H "rural area" means that area comprised in a village as define-din land revenue records. The Area Development authority is constituted under section 3 under Chapter – II of the Gujarat Town Planning and Urban Development Act, 1976 and not under section 22 falling under chapter – III. He takes us through the said chapters to state that villages are covered within the jurisdiction of Jamnagar Area Development Authority for the purpose of securing planned development and does not mean that the area has been notified as rural area by the State. He relies upon judgments in case of Gujarat Engineering Works 2010 (249) ELT 86 (TRI), DevilalKutir Shop 2015

(329) ELT 367, Macfield Beverages India Pvt. Ltd. 2008 (223) ELT 233. He also submits that the demand is also time barred as there in no instance of any suppression or malafide intention and the information was available in records.

3. Shri S.N. Gohil, Ld. Superintendent (AR) reiterates the findings of the impugned order and supports the same.

4. Heard both the sides and perused the records. We find that the SSI exemption has been denied to the Appellant on ground that the area falls under the jurisdiction of Jamnagar Development Authority (JADA) which is constituted for development of area falling outside the jurisdiction of Jamnagar Municipal Corporation. It is not in dispute that the area is falling under rural area of Jamnagar which is apparent from the certificate issued by the Revenue officer (Mamlatdar) who is having jurisdiction over the land. The Jamnagar Area Development Authority is only for the purpose of development of area and this in turn would not ipso facto change the status of land from rural to urban as apparent from Section 3 of Chapter - II of Gujarat Town Planning and Urban Development Act, 1976 as per which the State Government for the development of an area notify the same to be a development area. The section 22 relied upon by the lower authority is applicable for development of Urban Area under which an authority is constituted for development of Urban Area. Obviously section 22 is applicable in an urban area and not to rural area. No evidence has been brought on record to show that the impugned area does not fall under rural area and therefore the denial of SSI exemption Notification is not based upon any evidence. Furthermore the Ld. Counsel has submitted copy of notification No. 4.10.2013 issued by the State Government issued after the impugned period under which the survey number 133 on which the factory is situated was included in Jamnagar Municipal Corporation. This abundantly makes it clear that at the material time, the unit was situated in rural area and hence there is no reason to deny exemption benefit to Appellant. My view is also based upon Tribunal Order in case of GUJARAT ENGINEERING WORKS Vs. CCE, AHMEDABAD 2010 (249) E.L.T. 86 (Tri. - Ahmd.) wherein it was held as under :

> ***7***. *Apart from above we also note that as per the newspaper cutting relied upon by the assessee before Commissioner (Appeals) as also the certificate from the*

village officer of Nava Odhav Gram Panchayat submitted by the assessee before Assistant Commissioner, it becomes clear that Nava Odhav became a part of the Municipal Corporation of Ahmedabad with effect from 9-8-2005. Notification dated 10-8-2005 gave a status to Nava Odhav as Nava Odhav Municipal Borough for transitional period. A further notification issued on 14-2-2006 by the State Government merged the municipalities constituted under notification dated 10-8-2005 with the city of Ahmedabad. All these things show that prior to the said period Nava Odhav was considered to be a Rural Area and not Urban Area, in which case the benefit of the notification has to be extended to them. All the above evidences have not been considered by Commissioner (Appeals).

8. *In view of the above, we set aside the impugned order of Commissioner (Appeals) and restore the order of the Additional Commissioner, vide which the proceedings were dropped against the appellant. We further make it clear that in as much as we have held in favour of the assessee on merits, we are not going into the issue of limitation.*

5. Further the Tribunal's order in case of Devilal Kutir Shop 2015 (329) ELT 367, Macfield Beverages India Pvt. Ltd. 2008 (223) ELT 233 are also on same issue.

6. We thus do not find any reason to deny the SSI Exemption benefit to the Appellant and there is no reason to demand duty and penalty from Appellant unit. In case of co-appellants, we find that since the demand itself is not sustainable on merits, there is no reason to impose penalty upon them, Further there is no basis to impose penalty upon them when the Arbee Power is only owner of brand and Shri Kimjibhai is only raw material supplier. They do not have any involvement with the alleged duty demanded from Appellant. Hence there is no reason to impose penalty upon them resultantly the impugned order is set aside and the appeals are allowed with consequential reliefs, if any.

(Pronounced in the open court on 17.10.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Neha