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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10883 of 2015
(Arising out of OIA-VAD-EXCUS-001-APP-662-2014-15 Dated-04/02/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

M/s. Panoli Intermediates India P Ltd **.......Appellant**
Plot No. 122/1 & 2, Gidc, Nandesari,
Vadodara,Gujarat

VERSUS

C.C.E. & S.T.-Vadodara-i **........Respondent**
1st Floor...Central Excise Building,
Race Course Circle, Vadodara,
Gujarat-390007

APPEARANCE:
Shri. Mrugesh Pandya, Advocate for the Appellant
Shri. R. B. Bhaskar, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11256 /2020

DATE OF HEARING: 29.09.2020
DATE OF DECISION: 06.10.2020

RAMESH NAIR

The issue involved in the present appeal is that whether Di Calcium Phosphate Animal Feed Grade manufactured by the appellant by using rock phosphate shall be classified under Chapter 2309 as declared by the appellant or under chapter 2835 has claimed by the Revenue of the Central Excise Tariff Act, 1985.

2. Shri. Mrugesh Pandya Learned Counsel appearing on behalf of the appellant submits that Di Calcium Phosphate manufactured by the appellant is undisputedly Animal Feed Grade and correctly classifiable under Chapter heading 2309. He further submits that even if the Di Calcium Phosphate Animal Feed Grade is classifiable under 2835 then also it is exempted from payment of Excise Duty in terms of Notification No. 4/2016-C.E. (N.T.), dated 12.02.2016 which covers the period from 01.02.2008 to 01.02.2014, whereas, the period involved in the present case is June, 2012 to March, 2013. He submits that on the identical issue in the following case laws the issue has been settled in favour of the assessee.

- SPA Vet Min Pvt. Ltd. v/s. CCE & ST, Vadodra-I reported in 2017 (356) ELT 81 (Tri. Ahmd)
- Shree Pushkar Petro Products Ltd. v/s. CCE & ST, Kolhapur reported in 2016 (340) ELT 600 (Tri. Mumbai)]

- KPR Fertilizers Ltd. v/s. CC & ST reported in 2018 (10) TMI 526 – CESTAT, Hyderabad
- SA Pharma Chem Ltd. V/s. CCE reported in 2016 (11) TMI 155 – CESTAT, Ahmedabad

3. Shri. R. B. Bhaskar Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

4. We have heard both the sides and perused the records. We find that both the lower authorities have decided the matter against the appellant on the point that since Di Calcium Phosphate has been manufactured from rock phosphate, the Di Calcium Phosphate being on organic chemical is classifiable under chapter heading 2835. Accordingly, duty demand was confirmed. We find that whether the Di Calcium Phosphate Animal Feed Grade is classifiable under chapter heading 2309 or under 2835, it is prima facie covered under exemption Notification No. 04/2016-C.E. (N.T.) issued under section 11C of the Central Excise Act, 1944. We find that the applicability of this notification 04/2016-C.E. (N.T.) is vital, to decide the issue in hand, however, both the lower authorities have passed the order before issuance of the Notification No. 04/2016-C.E.(N.T.). Therefore, they did not have occasion to deal with this notification which has retrospective effect and it covers the period involved in the present case. In this undisputed position we are of the view that the matter needs to reconsidered in the light of notification No. 04/2016-C.E. (N.T.). Accordingly, we set aside the impugned order and allow the appeal by way of the remand to the adjudicating authority for passing a fresh order keeping in mind our above observation. Since, this matter pertains to old period of June, 2012 to March, 2013, it is expected from the adjudicating authority to pass a denovo adjudication order within a period of three months from the date of this order.

(Pronounced in the open court on 06.10.2020)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Kamakshi