(17)

DR
D.

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

O-20, Meghani Nagar, New Mental Hospital Compound Ahmedabad – 380 016
Tel. : 079-22683202 Fax No. 079-22683276

File No. E/1285 to 1294/07, E/3, 498, 494, 605 & 606/08 Date 12.02.09
E/Co-42 & 44/08

From : THE ASSISTANT REGISTRAR, CESTAT, AHMEDABAD (349)

23 FEB 2009

To,

Sunshine Oleochem. P. Ltd.
Survey No. 216. Vill. Mithirohar.
Gandhidham (Kutch)

In the matter of : Sunshine Oleochem P. Ltd & C.C.Ex. Rajkot. Appellant

V/S

C.C.Ex. Rajkot & Sunshine Oleochem P. Ltd Respondent

I am directed to transmit herewith a certified copy of Order No. A/421 to 437/WZB/AHD/2009 dated ~~03.02.09~~ 12.02.09 Passed by the Tribunal under Section 35(1) of the Central Excise Act, 1944, Section 129 (B) of the Customs Act, 1962 and Finance Act, 1944.

Assistant Registrar

Copy to :-

1. Respondent
C.C.Ex.
Rajkot

2. Advocate /Consultant
G. L. Rawal
52. Regal Bldg. 2nd flr.
Parliament Street.
New Delhi - 110001

3. Chief Commissioner, C.Excise/Customs: Ahmedabad / ~~Vadodara~~
4. Comm. C.Ex. / Customs (Appeals) Ahmedabad - III
5. Jt. C.D.R. CESTAT, Ahmedabad
6. ~~Central Library, CESTAT, New Delhi~~
7. CESTAT Bar Association, New Delhi
8. CESTAT Bar Association, Ahmedabad
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10. M/s.Commercial Laws of India Pvt Ltd
11. Centax Publication (P) Ltd
12. Deeparchie Publication.
13. M/s.Taxmann Allied Service Pvt Ltd
14. M/s.Raghuraman's
15. M/s.Excise & Customs cases
16. Tax India Online Ltd.
17. Easy Service Tax Online Dot Com P. Ltd.

Assistant Registrar

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Zonal Bench, Ahmedabad

COURT : II

Appeal No.	:	E/1285 to 1294 of 2007, E/3, E/493, E/CO-42 E/494, E/CO-44, E/605 & 606 of 2008
Arising out of	:	OIA No. 243 to 252/2007/Commr (A)/Raj. dtd. 31.8.2007, OIA No. 23/2008/ Commr (A)/Raj. dtd. 29.1.2008, OIA No. 24/2008/ Commr (A)/Raj. dt. 31.1.2008
Passed by	:	Commr. (A) C.Ex. & Cus. Rajkot

For approval and signature :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B.S.V. Murthy, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3	Whether their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant (s)	:	**M/s. Sunshine Oleochem Pvt. Ltd.,** **Commissioner, C. Ex. Rajkot**
Represented by	:	Shri G L Rawal, Sr. Adv. Shri Sameer Chitkara, SDR
Respondent (s)	:	**Commissioner, C. Ex. Rajkot,** **M/s. Sunshine Oleochem Pvt. Ltd.**
Represented by	:	Shri Sameer Chitkara, SDR Shri G L Rawal, Sr. Adv.

CORAM :

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. B.S.V. Murthy, Member (Technical)

Date of Hearing : 03.02.2009

Date of Decision : 12.02.2009

ORDER No. A/421 to 437 /WZB/AHD/2009

Per : Mrs. Archana Wadhwa, Member (Judicial)

All the appeals filed by the assessee as also by the Revenue are being disposed off by a common order as they arise out of the same impugned order passed by Commissioner (Appeals).

2. As per the facts on record, appellants M/s. Sunshine Oleochem Pvt. Ltd. has set-up a unit in the Kutch, Gujarat and were availing the benefits of area based Notification No. 39/2001-CE dated 31.7.2001. The said Notification extends benefit to a new unit setup in the Kutch district of Gujarat on or after 31.07.2001 and commenced commercial production before 31.12.2005. The manufacturers entitled to avail benefit of the Notification are first required to utilize the entire cenvat credit available to them on the last date of the month under consideration for payment of duty on goods cleared during such months and balance duty amount is required to be paid in cash through PLA, which duty paid by the assessee is refunded to him. The benefit is available subject to fulfillment of certain conditions.

3. The fact that the appellants setup a unit in the above area and started commercial production before 31.12.2005 is not in dispute. The value of investment in the plant and machinery is also to the tune of Rs. 34 Crores approximately and is not the subject of the dispute. In fact, the appellant's claim of refund of duty paid out of PLA in respect of the main product being manufactured, being toilet soap and fatty acid, stands allowed by the authorities. The dispute is in respect of duty paid on Stearic Acid, Crude Glycerin and Glycerin and Pitch,

the claim of refund of ~~which~~ duty stands denied by the authorities below. The main reason of denial of refund claim in respect of above items is that the same does not stand mentioned in certificate issue by the Committee of Chief Commissioners, Central Excise, Ahmedabad and the Principal Secretary, Govt. of Gujarat, Department of Industries.

4. Commissioner (Appeals), however, extended the benefit in respect of Stearic Acid by holding that Stearic Acid is nothing but a Fatty Acid which is one of the specified products in the certificate issued by the Committee. Revenue being aggrieved with the said extension of benefit of Notification to fatty acid, has filed the appeal. The assessee's appeal is in respect of other products i.e. Crude Glycerin, Glycerin and Pitch and denying the refund of duty paid on the goods on the ground that the same were not specified items in the certificate issued by the Committee.

5. After hearing both the sides duly represented by Shri G.L. Rawal, Sr. Advocate and Shri Sameer Chitkara, SDR, we find that the substantial condition of the notification as regards the investment and date of commencement of commercial production stands satisfied by the appellant. Further, clause 3(ii) & 4(i) of the Notification lays down that;

> 3. The exemption contained in this notification shall be subject to the following conditions, namely :-
>
> (i) It shall apply only to new industrial units, that is to say, units which are set up on or after the date of publication of this notification in the Official Gazette but not later than the 31st day of July, 2003;
>
> (ii) In order to avail of this exemption, the manufacturer shall produce a certificate from a Committee consisting of the Chief Commissioner of Central Excise, Vadodara and the Principal Secretary to the Government of Gujarat, Department of Industry, to the jurisdictional Assistant

Commissioner or the Deputy Commissioner of Central Excise, as the case may be, that the unit in respect of which exemption is claimed is a new unit and has been set up during the time period specified in condition (i) above.

(iii) Before effecting clearances under this notification, the manufacturer shall also furnish a declaration regarding the original value of investment in plant and machinery installed in the factory as on the date of commencement of commercial production, to the Assistant Commissioner or the Deputy Commissioner of Central Excise, as the case may be.

4. Nothing contained in this notification shall apply to a 4. manufacturer or a factory availing of exemption under any of the following notifications, namely :-

(a) Notification No. 8/2001-C.E., dated the 1st of March, 2001;

(b) Notification No. 9/2001-C.E., dated the 1st of March, 2001; and

[(c) * * *].

Explanation : For the purpose of this notification, -

(i) a change in the name or in the nature of ownership or a change in location of an existing unit would not entitle anyone for treatment as a "new" industrial unit.

As is seen from the above that the certificate from the Committee is required to be produced indicating that the unit is a new unit and has been setup during the time period as specified in the Notification. Undoubtedly, the appellants satisfied the above condition. However, the benefit of the Notification stands denied on the sole ground that whereas, the certificate of Committee only mentions the Fatty Acid as the specified item to be manufactured by the appellant, benefits cannot be granted to the other products. On the other hand, the appellant's contention is that such certificate is required to be submitted in respect of the unit and the same is not required to be produced in respect of each and every product manufactured by them. As long as the certificate satisfied the condition of "*new unit*" (*Emphasis provided*), the benefit has to be extended. In any case, it is their submission that Crude Glycerin, Glycerin and Pitch are down the stream products which emerge as by~~e~~ products on further working upon fatty acids. They are manufacture with the same set of machines, with which the main product is manufactured. They have relied upon the Board Circular No. 119/21/2006-CX.3 and the Tribunal's decision in the case of Indian Steel Corporation Ltd. [Order No. A/1670-1671/ AHD/2008] and M/s. Value Packaging [Order No. A/1703/WZB/AHD/08 dt. 27.8.2008], wherein by taking note of above circular of the Board, it was held that the products which are down the stream line and are manufactured by the same machinery, the benefit is not to be denied in respect of the same as it does not amount to production of an altogether a new and different product with new machinery. For better appreciation we reproduce para 4 & 5 of the Tribunal's decision in the case of Value Packaging :-

> "4. *By accepting the above stand, the Commissioner (Appeals) held that corrugated boxes are down stream product of corrugated sheets manufactured by the same plant & machinery installed before the stipulated date and as such, it cannot be construed as if the assessees commenced the commercial production only after 31.12.2005. It is not the Revenue's case that sheets were manufactured after the said date or any new machinery is installed after the cut off date. As admittedly, the corrugated boxes are manufactured out of the corrugated sheets, the production of which commenced before 31.12.2005, no infirmity could be found in the view adopted by the Commissioner (Appeals). In any way, we find that Central Board of Excise & Customs vide their letter F.No.119/21/2006-CX.3 dated 10.7.2008 clarifying the position. For better appreciation, we reproduce the relevant part of the said letter:*
>
> > *"Point No1. Whether the benefit of exemption would be available to goods/products that unit starts manufacturing after the cut off date for the commencement of commercial production i.e. 31.12.2005.*
> > *Comments: There would be two situations. First is that where a unit introduces a new product by installing fresh plant, machinery or capital goods after the cut off date in such a situation, exemption would not be available to this new product. The said product would be cleared on payment of duty, as applicable, and separate records would be required to be maintained to distinguished production of these products from the products which are eligible for exemption.*
> >
> > *The other situation is the one where a unit starts producing some products (after the cut off date) using the plant and machinery installed upto the cut off date and without any addition to the plant and machinery. For example, in case of plastic moulded products a unit may commence the production of different products simply by changing the mould and dies in that case the unit would be eligible for the benefit of Notification because the plant and machinery used for manufacture has remained the same. In this connection, it is further clarified that for the purpose of computing the original value of plant and machinery, the value of plant and machinery installed on the date of commencement of commercial production only shall be considered."*
>
> *As is seen from above clarification, where the factory is complete before the cut off date and commercial production has started, subsequent emergence of a new product using the same plant & machinery will not make the assessee disentitled to the Notification. As already observed, there is no dispute about the production of sheets before 31.12.2005 and subsequent conversion of such sheets into boxes after the said date will not have effect of making the assessee ineligible to the benefit of the Notification.*

> *5. It is well settled that the Revenue cannot argue against the clarifications issued by the Board. We make it clear that even in the absence of the above clarification, the order passed by the Commissioner (Appeals) cannot be faulted upon inasmuch as, admittedly, plain corrugated sheets were manufactured before the cut off date and the entire plant & machinery was installed before the said date. Subsequent manufacture of boxes out of corrugated sheets will not amount to production of an altogether new and different product so as to deny the given benefit. In view of the above, we reject the appeals filed by the Revenue."*

6. We find that the ratio of the above decisions, as arrived at on the basis of the Board letter, is fully applicable to the facts of the instant case. Admittedly the appellants have satisfied the condition of investment and date of start of commercial production. It is not the Revenue's case that any new machinery stands added by the appellant after the cut-off date, so as to specially manufacture the Crude Glycerin, Glycerin and Pitch. From the flow chart placed on the record, it is clear that the said products are procured by further working upon Fatty Acids and are in the nature of bye-product. As such, benefit of the Notification cannot be denied to them. Accordingly, the appeals filed by the assessee are allowed with consequential relief to them.

7. As we have already held that the benefit of the Notification is available to the Crude Glycerin, Glycerin and Pitch, which are obtained by further procession of Fatty Acid, no fault can be found with that part of the order of Commissioner (Appeals) extending the benefit to the fatty acid itself. Accordingly, appeal filed by the Revenue is rejected. All the appeals are disposed off in above manner.

(Pronounced in the Court on 12th Feb 2009)

(B.[illegible]chy) 11/2/09
Member (Technical)

Sd/- 10.9
(Archana Wadhwa)
Member (Judicial)

...KL

Copy of the Order forwarded ...

Registrar
Customs, Excise & Service Tax
Appellate Tribunal

12 FEB 2009