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

REGIONAL BENCH- COURT NO.3

EXCISE Appeal No. 12483 of 2014
(Arising out of RJT-EXCUS-000-APP-724-13-14dated 03.03.2014passed by Commissioner of Central Excise (Appeals) –Rajkot)

PRITHVI PUMPS **...Appellant**
PLOT NO. 28/29, BALAJI INDUSTRIAL ESTATE
KOTHARIA, RAJKOT-GUJARAT

VERSUS

C.C.E. & S.T.-RAJKOT **...Respondent**
CENTRAL EXCISE BHAVAN, RACE COURSE
RING ROAD, INCOME TAX, OFFICE, RAJKOT
GUJARAT-360001

APPEARANCE:
Shri P. P. Jadeja, Consultant appeared for the Appellant
Shri P. Ganesan, Superintendent (Authorized Representative) for the Respondent

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

Final Order No. 12335 /2023

DATE OF HEARING: 11.10.2023
DATE OF DECISION: 20.10.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for SSI Exemption in respect of their final product i.e. Submersible Pumps falling under CETH 8413 7010 on the fact that though the product of the appellant was claimed in confirmation to the standards of Bureau of Indian Standards (BIS) but the Certificate was obtained subsequently and whether the demand is hit by limitation in the facts of the present case.

2. Shri P.P. Jadeja, learned Consultant appearing on behalf of the appellant submits that there is no evidence adduced by the department that the appellant's pump was not in conformation to the standards of BIS, on the contrary, the appellant have claimed that though the Certificate was not obtained but the appellant's product i.e. pump had been manufactured as per the standards of Bureau of Indian Standard.

He submits that for the same product without any modification either in the manufacturing process or in the manufacturing plant, the BIS has given certificate subsequently holding that the product in question is as per the standard of BIS. He submits that as per the Notification also there is no requirement of the certificate. The only need is the product manufactured by the assessee should be in conformation to the standards specified under BIS which is not in dispute. In the present case, only for te reason that the certificate could not be obtained, the Exemption cannot be denied so long the product is having the standard of BIS. He submits that since the appellant had a bonafide belief that the pump manufactured by them is in conformation to the standard of BIS no suppression of fact can be attributed to the appellant. He submits that the bonafide of the appellant was proved on the basis of the certificate issued by BIS subsequently for the same product hence the demand is also time barred. In support of his submission, he placed reliance on the following judgments:

- 2006 (04) LCX002 Nanya Imports and Exports Enterprises
- 1968 (09) LCX0001 Hemraj Gordhandas
- 2002 (02) LCX 0021 Inter Continental (India)
- 1992 (10) LCX 0011 Citric India Ltd.
- 1985 (08) LCX 0027 Aruna Sugars Limited
- 1989 (02) LCX 0024 CCe vs Chemphar Drugs & Liniments

3. On the other hand, Shri P. Ganesan, Learned (Superintendent) authorized representative appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that the present appeal can be disposed of only on limitation without going into merit of the case.

5. We find that it is the appellant's claim that the goods manufactured by them is in conformation to standards of BIS. This claim of the

appellant gets reinforced on the basis that for the same product subsequently, the appellant were issued certificate by the BIS certifying that the product manufactured by the appellant is as per the standards prescribed under BIS. On this basis the bonafide belief of the appellant is found factually correct. As per the claim of the appellant, the same product which was subsequently certified by BIS was in conformation to the standards of BIS, therefore, the appellant have rightly entertained the belief that their product is exempted under Notification No. 8/2003. We also note that the submission of the appellant that the Notification does not prescribe the issuance of certificate to prove that the specifications of the product or the standards of the product is in conformation to BIS found force and prima facie stronglysupport to them. On all these facts and circumstances of the case, we are of the view that there is no malafide on the part of the appellant with intent to evade payment of duty. For the demand under extended period in the present case for the period 01.01.2007 to 18.03.2009, the show cause notice was issued on 04.04.2012 which is much after the normal period of one year. As we discussed above, since the appellant had no malafide intention the entire demand raised by invoking the extended period will not sustain on the ground of time bar itself. Therefore, without going merit of the case, we are of the view that the demand is hit by limitation. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 20.10.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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