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

REGIONAL BENCH : COURT NO. 3

**EXCISE Appeal No. 396 of 2012-DB**
[Arising out of Order-in-Original/Appeal No 50&51-2012-AHD-I-CE-MM-COMMR-A--AHD dated 20.04.2012 passed by Commissioner of Central Excise-AHMEDABAD-I]

**Stovec Industries Ltd** ...Appellant
Near Lamba Village, Post-narol,
AHMEDABAD
GUJARAT-382405

*VERSUS*

**C.C.E.-Ahmedabad-i** ...Respondent
C. EX BHAVAN,
NR PANJRAPOLE & POLYTECHNIC, AMBAVADI,
AHMEDABAD,
GUJARAT-380015

**WITH**

**EXCISE Appeal No. 397 of 2012-DB**
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**APPEARANCE:**

Present For the Appellant : Shri Aditya Tripathi, Advocate

Present For the Respondent : Shri G. Kirupanandan, Superintendent (AR)

**CORAM:**
**HON'BLE MEMBER (JUDICIAL),ASHOK JINDAL**
**HON'BLE MEMBER (TECHNICAL),RAJU**

**FINAL ORDER NO. A/12556-12557 / 2021**

Date Of Hearing: 10/11/2021
Date of Decision: **30/11/2021**

**Ashok Jindal**

The appellant has filed these appeals against the impugned orders wherein benefit of notification no. 06/2011-CE was denied to them.

2. The facts of the case are that the appellant is engaged in the manufacturing of various kinds of machinery and parts thereof availing Cenvat credit on inputs and input services and paying duty at the time of clearance of final product. The appellant is a manufacturer of nickel perforated rotary screen classifying the same under chapter heading 84405031 and paying Central Excise duty on their clearances before 01.03.2011. On 01.03.2011 notification no. 06/2011-CE was introduced and as per the said notification the appellants sought the benefit thereof and started paying concessional rate of duty at the rate of 5%. The same was reflected in their monthly returns. It was sought from the appellant how their product falls under the category at Sno. 57 of the notification no. 02/2011-CE dated 01.03.2011. It was answered that the appellant is entitled for the benefit of said notification at List no. 2. Sr. no. 41 of the notification no. 06/2011 for the product manufactured by them. Thereafter, two show cause notices were issued to the appellant to deny the benefit of said notification for the period March 2011-September 2011 to deny the benefit of the notification which permits concessional rate of duty. Consequently,the demands were sought to be confirmed along with interest and penalties were also proposed. The matters were adjudicated. The authorities below relied on the decision of this Tribunal in the case of Commissioner of Central Excise, Vapi v/s Harish Industries Engineers 2008 (223) ELT651(Tri- Ahd.) holding that the nickel perforated screen is an accessory and the same is not part or the component of the machinery specified at item no. 1-40 of the said notification in list 2. Aggrieved from the said orders, appellant is before us.

3. Learned Counsel for the appellant submits that the whole case of the department is based on the decision of this Tribunal in the case of Harish

Industries Engineers (supra) to say that the above said machine cleared by the appellant are accessories and not a part or component. It is his contention that in the case of Harish Industries Engineers, the issue before this Tribunal was of classification. Therefore, the said decision cannot be relied upon to deny the benefit of the notification. He relied on the decision of **CCE Jaipur vs Mewar BartanNirman Udyog 2008 (231) ELT 27 (SC)** to say that where the language is plain and clear, effect must be given to it. While interpreting the exemption notification, one cannot go by rules of interpretation applicable to cases of classification dispute in the cases of HSN which is the basis of tariff. He further relied on the decision of the Calcutta High Court in the case of **Indo Japanese Industries vs Assistant Collector, Calcutta 1986 (24) ELT 527 (Cal.)** wherein it was held that Dynamo lighting sets is a cycle part exempt from duty although that is sold separately. He also relied on the decision of **Jyoti Limited vs. Union of India 1979 (4) ELT(J546) Guj**.

4. On the other hand, learned Authorised Representative strongly supported the impugned order and heavily relied on the decision of Hon'ble Apex Court in the case of **State of U.P vs Kores (India) Ltd. 1990 (26) ECR 464 (SC)** and **Harish Industries Engineers (supra)** to say that the said items cleared by the appellant are not parts or components of the items mentioned at Sr. no. 1-40 of list 2 of notification no. -6/2011-CE dated 01/03/2011 and are accessories only.

5. Heard the parties considered their submissions. On consideration of the submissions made by both the parties and records placed before us, we find that the appellant has classified the product cleared by them under chapter heading no. 84425031.

For better appreciation of the facts, the said chapter tariff heading is extracted below:

| | | | |
|---|---|---|---|
| 8442 | Machinery, apparatus and equipment (other than the machine tools of headings 8456 to 8465) for preparing or making plates, printing components; plates, cylinders and other printing components; plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished) | | |
| 844230 | - *Machinery, apparatus and equipment:* | | |
| 8442 30 10 | ---Brass rules………………………………………………………………… | u | 12% |
| 8442 30 20 | ---Chases………………………………………………………………………. | u | 12% |
| 8442 30 90 | --- Other……………………………………………………………………….. | u | 12% |
| 8442 40 00 | - Parts of the foregoing machinery, apparatus or equipment | kg. | 12% |
| 844250 | - *Plates, cylinders and other printing components; plates, cylinders and lithographic stones, prepared for printing purposes (for example, planed, grained or polished).* | | |
| 84425010 | ---Plates and cylinders……………………………………………………. | kg. | 12% |
| 84425020 | ---Lithographic plates………………………………………………………. | kg. | 12% |
| | ---*Plate, cylinder and lithographic stones prepared for printing process:* | | |
| 844250 31 | ---Plate and cylinder for textile printing machine…………. | kg. | 12% |
| 8442 50 39 | ---Other……………………………………………………………………………… | kg. | 12% |
| 8442 50 40 | ---Highly polished copper sheets for making blocks …….. | kg. | 12% |
| 8442 50 50 | --- Highly polished zinc sheets for making process blocks… | kg. | 12% |
| 8442 50 90 | ---Other ……………………………………………………………………………… | kg. | 12% |

The classification of the product cleared by the appellant has been admitted by both the sides and the Revenue has not raised any objection with regard to classification. The only issue raised by the Revenue with regard to denial of notification no. 06/2011-CE dated 01/03/2011 and heavily relied on the decision of Harish Industries Engineers (supra). Admittedly, in the case of Harish Industries Engineers (supra) the dispute with regard to classification of product and in the case of Mewar Bartan Nirman Udyog (supra) Hon'ble Apex Court has clarified that while interpreting exemption notification, one cannot go by rules of interpretation applicable to cases of classification under the tariff. Therefore, the said decision in the case of Harish Industries Engineers(supra) is not applicable to the facts of the present case. We take a note of the fact that the appellant has classified the impugned goods under CTH 844250 which includes "*Plates,cylinders and other printing components*;" The said classification has not been disputed by the Revenue. In the circumstances while giving benefit of notification no. 06/11-CE dated 01/03/2011 in list 2 Sr. no. 41 which reads as under:

> *"(v) in List-2, after item no. 40 and the entries relating thereto, the following shall be added namely:*
>
> *(41) Parts or components of the machinery specified at item nos. (1) to (40) above."*

*'parts or components of textile printing machinery'* are entitled for the benefit of said notification which cannot be denied without challenging the classification. In these circumstances, we hold that appellant is entitles for benefit of Sno. 41 in list 2 of notification no. 06/2011-CE dated 01/03/2011. Therefore, no demand is sustainable against the appellant. Consequently, no penalty is imposable on the appellant.

6. In view of the above discussion, we set aside the impugned orders and allow the appeals with consequential relief, if any.

*(Pronounced in the open court on 30.11.2021)*

**(ASHOK JINDAL)**
**MEMBER (JUDICIAL)**

**(RAJU)**
**MEMBER (TECHNICAL)**

**Diksha**