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

REGIONAL BENCH- COURT NO. 3

Custom Appeal No. 11676 of 2018-DB

[C/Cross/10884/2018]

(Arising out of OIO-KCH-EXCUS-000-COM-62-17-18 Dated 09/03/2018 passed by Commissioner of Central Excise, Customs and Service Tax-KUTCH (GANDHIDHAM))

Commissioner of C.E.-Kutch (gandhidham) ....Appellant
CENTRAL EXCISE & SERVICE TAX COMMISSIONERATE,
CENTERAL EXCISE BHAVAN PLOT No. 82, SECTOR 8, GANDHIDHAM(KUTCH)
GANDHIDHAM(KUTCH)
Gujarat

VERSUS

Indian Farmer Fertillizer Co Operative Limited ....Respondent
(iffco), Finance And Accounts Administration Building Department,
Old Kandla,kandla Port,
KUTCH,GUJARAT

With

Excise Appeal No. 12193 of 2019-DB

[E/Cross/10186/2020]

(Arising out of OIA-KCH-EXCUS-000-APP-067-2019-20 Dated 25/06/2019 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT)

Commissioner of C.E.-Kutch (gandhidham) ....Appellant
CENTRAL EXCISE & SERVICE TAX COMMISSIONERATE,
CENTERAL EXCISE BHAVAN PLOT No. 82, SECTOR 8, GANDHIDHAM(KUTCH)
GANDHIDHAM(KUTCH)
Gujarat

VERSUS

Indian Farmers Fertilizer Co Operative Limited ....Respondent
Finance & Accounts Administration, Building Department,
Old Kadila, Kadila Port
KUTCH, GUJARAT

APPEARANCE:

Shri Tara Prakash, Learned Deputy Commissioner (AR)appeared for the Appellant
Shri Vinay Ansurkar, Learned Counsel with Shri Shubhendu Patnaik, Consultant appeared for the Respondent

CORAM: HON'BLE MR. RAMESH NAIR (JUDICIAL)
HON'BLE MR. C L MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO.11555-11556/2024

DATE OF HEARING:19.03.2024
DATE OF DECISION:16.07.2024

RAMESH NAIR

The issue involved in the present case is that whether the micronutrients manufactured by the appellant can be considered as other fertilizer in terms of board circular dated 21.11.1994 and 19.05.1998.

2. If Yes, Whether the appellant is eligible for exemption Notification No. 12/2012-CUS and Notification No.12/2012-CE which exempts the goods used in the manufacture of fertilizer.

2. Shri Tara Prakash, Learned Deputy Commissioner (AR), appearing on behalf of the Revenue appellant submits that the adjudicating authority has decided that the goods manufactured by the appellant i.e. "Zink Sulphate Monohydrate", a Micronutrient is fertilizer in terms of board Circular No.79/79/94-CX dated 21.11.1994 and accordingly the demand for the period up to 05.04.2016 was set aside. It is his submission that the said board circular dated 21.11.1994 was modified vide Circular No. 392/25/98-CX dated 19.05.1998 according to which micronutrients would not be classified under Chapter 31 as Fertilizers for Central Excise. Therefore, the entire order which is based on circular dated 21.11.1994 which stood modified vide circular dated 19.05.1998 which is applicable during the relevant period in the present case the order is illegal and incorrect. He reiterates the grounds of appeal.

3. Shri Vinay Ansurkar, Learned Counsel with Shri Shubhendu Patnaik, Consultant appearing for the respondent mainly submits that since there is no suppression of facts on the part of the appellantthe demand for the extended period is time barred. He placed reliance on the following judgments:-

- The Hon'ble CESTAT, Mumbai 2015 (327) E.L.T. 500 (Tri. - Mumbai) in the case of Commissioner of Customs, Import, Mumbai vs. Vidhi Dyestuff Manufacturing Ltd.
- Devraj Salian Vs The Commissioner of Customs (1), Mumbai 2015 (316) E.LT. 139 (Tri. - Mumbai)
- Commissioner of Central Excise vs M/s Karnataka Agro Chemicals (2008(227) E.L.T. 12 (SC))
- L & T Sargent & Lundy Ltd vs. Commissioner of Central Excise, Vadodara (2014(35) S.T.R. 945 (Tribunal Ahmedabad)}
- Hon'ble Supreme Court in the case of M/s. Suchitra Components Ltd. v. CCE, Guntur

4. On the careful consideration of the submissions made by both the sides and perusal of records, we find that Learned the Commissioner while dropping the demand for the period up to 05.04.2016 heavily relied upon the board Circular No. No.79/79/94-CX dated 21.11.1994. We find that the circular was modified vide subsequent Circular No. 392/25/98-CX dated 19.05.1998. However, the adjudicating authority has not considered the circular dated 19.05.1998 which is very vital for deciding the whole issue. As regard the arguments of the respondent on the limitation, we find that there is force in the argument that prima facie it appears that there is no suppression of facts. However, this aspect has not been considered properly by the learned adjudicating authority. Therefore, on both the issues that on merit as well as limitation the matter needs to be reconsidered.

5. As regard Excise Appeal No. E/12193/2019 for the same reasoning given above, the matter needs to be remanded. Hence, we set aside the impugned orders and remand the matter to the adjudicating authority for deciding a fresh. COs filed by the respondent also stand disposed of.

(Pronounced in the open court on 16.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Bharvi