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

REGIONAL BENCH- COURT NO.3

Excise Appeal No.10859 of 2020

(Arising out of OIO-SUR-EXCUS-000-COM-021-20-21 dated 30/09/2020 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

AMBICA ENGINEERING WORKS **......Appellant**
Plot No. A/9-10-11, B/H Chinco Dyeing, Bamroli Gram Panchyat, Pandesara
Surat
Surat
Gujarat

VERSUS

C.C.E. & S.T.-SURAT-I **......Respondent**
New Building...Opp. Gandhi Baug,
Chowk Bazar,
Surat, Gujarat, 395001

APPEARANCE
Shri Rahul Gajera, Advocate appeared for the Appellant
Shri Dinesh Prithiani, Assistant Commissioner (Authorized Representative) for the Appellant

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

Final Order No. A/ 10662 /2022

DATE OF HEARING: 06.06.2022
DATE OF DECISION: 07.06.2022

RAMESH NAIR

The brief facts of the case are that the appellant commenced manufacturing of textile machineries on 15.04.2007 falling under chapter 84 of the Central excise Tariff Act, 1985 namely "Relax Drum washer Machine" and cleared the same availing exemption under notification No. 06/2002 dated 01.03.2002 describing the same as "Relax Drum for Relaxation of Fabric" in their sale invoices. The appellant submitted an application on 02.08.2007 for Central Excise Registration before crossing the limit of turnover in terms of Notification No. 08/2003-CE dated 01.03.2003. On 09.08.2007 the appellant was granted Central Excise Registration. The Jurisdiction Assistant Commissioner Central Excise directed the Range Superintendent to carry out the post facto verification of the premises and intended purpose for which application has been made. Vide letter dated 30.08.2007 the superintendent submitted the verification report to the Assistant Commissioner. The appellant filed ER-1 Return on 27.02.2008 for the quarter ending 21.12.2007. The appellant submitted a letter dated 28.08.2008 in response to the letter dated 18.02.2008 in which details of sales for the years prior to the registration were once again submitted. In November 2008, the audit was conducted by the Central Excise officers of the department. On 18.03.2009 the statement of the appellant was recorded by the officers of the department and thereafter the SCN dated 06.04.2009 was issued inter-alia raising demand of duty for the period 15.04.2004 to February 2008. In the SCN it was proposed to deny the exemption notification No 06/2002- CE dated 01.03.2002. Vide Order in Original dated 31.07.2010 proposals made in the SCN were confirmed, against which the appellant filed the appeal before this tribunal. The Tribunal vide order dated 06.09.2019 remanded the matter with the direction to consider the matter on limitation in view of the verification report of the Superintendent. The Adjudicating Authority in the de- novo adjudication passed order in original dated 30.09.2020 whereby he confirmed the duty demand invoking the extended period of limitation. Therefore, the present appeal.

2. Shri Rahul Gajera, Learned Counsel Appearing on behalf of the appellant submits that the issue in the present case is only to decide whether the extended period under proviso to section 11A of the Central Excise Act, 1944 will apply in the facts of the present case in the absence of any evidence of wilful misdeclaration or suppression of facts or intention to evade payment of duty. He submits that the entire demand was raised invoking the extended period. He submits that there is no wilful mis-statement or suppression of fact or intention to evade central excise duty as it is evident from the facts that the appellant cleared the goods without charging Central excise duty and describing the impugned machine as "Relax Drum for Relaxation of fabrics" in the sales invoices. Upon crossing the turnover limit of value of goods in terms of SSI exemption Notification No. 08/2003-CE. The appellant had duly applied for and granted Central Excise Registration during which range superintendent had carried out verification of the premises and machines manufactured by the appellant and purpose of central excise registration.

2.1 He submits that the Range Superintendent who was entrusted the function to verify the purpose of central excise registration determined and reported that goods manufactured by the appellant viz. Relax Drum Machines were covered at Sr. No 3, list no.2 of Notification No, 06/2006 and that the same were accordingly exempt from duty for the period prior to 01.03.2007 and that the said goods with effect from 01.03.2007 were leviable to duty in terms of Notification No. 06/2007-CE dated 01.03.2007.

2.2 He submits that entire details of sales for the period prior to registration was also submitted to the department. As regard the other machines viz. Sourcing machine, as stated by the appellant in his statement dated 18.03.2009, the same was manufactured on trial basis and that the said machine is mentioned at Sr. 21 of the list 6 of notification No. 06/2002-CE dated 01.03.2002 as amended and further stated that the functioning of the manufactured by the appellant and the one specified in the notification is one and the same.

2.3 The appellant after obtaining registration had cleared the goods on payment of applicable duty in terms of Notification No. 06/2007-CE dated 01.03.2007 and filed ER-1 return. The appellant held a bona fide belief that the machines manufactured by the appellant were covered under the said notification and were exempt from Central Excise duty for the period 15.04.2004 to 12.08.2007 and the same were leviable to concessional rate of duty thereafter.

2.4 He submits that the bona fide view of the appellant was also the view of the department hence, there was no wilful mis- declaration or suppression of facts, it cannot be alleged that there was malafide on the part of appellant in not paying duty, consequently, the larger period of limitation cannot apply.

2.5 He submits that on identical issue, the Hon'ble tribunal in the case of Accurate Trans Heat Pvt Ltd Vs. Commissioner of Central Excise Surat- 2018 (7) TMI 973- CESTAT AHMEDABAD has held that where there is no evidence of mis-declaration or suppression of facts or intention to evade payment of duty, demand of duty invoking extended period of limitation cannot be sustained. He also placed reliance on the judgment of Supreme Court in the case of Continental Foundation JT. Venture Vs. Commissioner of Central Excise , CHANDIGARH-I- 2007 (216) ELT 177 (SC).

3. Per contra, Shri Dinesh Prithiani, Learned Assistant Commissioner (AR) appearing on behalf of the revenue reiterates the finding of the impugned order. He placed reliance on the following judgments:

- Commissioner of Central Excise & Service Tax, Surat Vs. Bhagyarekha Engineers Pvt Ltd – 2014 (309) ELT 108 (Tri. Ahmd)
- Bayers India Ltd vs. Commissioner of Central Excise, Mumbai-III- 2001 (130) ELT 97 (Tri. Mumbai)

4. We have carefully considered the submissions made by both sides and perused the records. As regard the merit of the case that whether the appellant is eligible for exemption Notification No 06/2006-CE or otherwise, the issue attained finality as per the tribunal's order in the case of Bhagyarekha Engineers Pvt Ltd (Supra) against the appellant. In the present case the limited issue is that whether the invocation of longer period in terms of proviso to section 11A is correct or otherwise. We find that this is the second round of appeal before this tribunal. In the first round this Tribunal had remanded the matter vide Final Order No A/11705/2019 dated 06.09.2019 wherein the following order was passed:-

> "4. *We have carefully considered the submission made by both the sides and perused the records. We find that the issue on merit is settled as the same has been decided in the case of CCE, Surat vs. Bhagyarekha Engineers P Ltd. (supra) against the assessee and the same was upheld by the Hon'ble Supreme Court . Now the only issue remains to be decided is whether the demand raised by the Revenue is barred by limitation. In this regard, we find that the appellant have heavily relied upon the physical verification report for registration vide F.no. RI Registration/AEW/07-08/Surat dated 30.08.2007 given by Superintendent Range-I Division-3, Surat –I to the Assistant Commissioner. The said verification report is scanned below*:-

F.

OFFICE OF THE SUPERINTENDENT OF CENTRAL EXCISE
RANGE – I : DIVISION – III, SURAT – I.

F.No.R.I Registration/AEW 07-08 Surat, dated the 30 August, 2007

To

The Assistant Commissioner,
Central Excise Division – III,
Surat – I.

Sir,

Subject-: Central Excise Verification report in respect of New Registration viz. M/s Ambica Engineering Works, Plot No. A-9-10-11, Behind Chinco Dyeing, Bamroli Gram Panchayat, G.I.D.C., Pandesara, Surat. Registration No. AABHH9799QXM001. - M R.

....

Please refer to your letter F.No.V 13-3 Ambica Engineering Registration '07 dated 9.8.2007 on the above subject.

As per the directions the undersigned along with the Inspector visited the premise of M/s Ambica Engineering Works, Plot No. A-9-10-11, Behind Chinco Dyeing, Bamroli Gram Panchayat, G.I.D.C., Pandesara, Surat on 27.8.2007.

The factual report in the matter is as under :

(1) The premises are situated at the location mentioned in the application Form: .
(2) At the time of visit, Shri Kishorbhai, Authorised person of the unit was available, production of Relay Drum was in process.
(3) The products declared by the unit were exempted vide Notification No.6/2006 (Sr. 3 list No 2). The Central Excise Duty on the said product has been imposed vide Notification No. 6/2007-C.E dated 1.3.2007. The Unit was asked to provide details of production clearance value etc. ~~before~~ month of March, 2007 to till date but the said details are still awaited.

30/8/07

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(4) Regarding the Ownership of the premises, the unit has submitted only Photo copy of "Possession Receipt". No other Registered sales Deed in this regard has been produced. As per the said document, the premises is within the possession of Shri Harshadbhai Dhansukhbhai Modi, Proprietor of the unit.

(5) Since the unit is proprietorship concern and as a measure to safeguard the tentative revenue liability, if any, in future the unit was asked the furnish the projection of the business along with his financial status but the said details are still awaited.

30/8/07

SUPERINTENDENT
CENTRAL EXCISE
RANGE – I : DIVISION – III
SURAT – I.

The copy of above report was obtained by the appellant under RTI with s letter no. XIX/01/2011 dated 09.07.2019 almost after 8 years of filing the appeal. It is observed that this letter was not considered by the lower authorities as the same was neither presented nor available at the time of adjudication . Since , only on this letter, by verification report, the superintendent has mentioned about availing the exemption notification No. 06/07-CE dated 01.03.2007, the appellant's submission is that there is no suppression of fact. Hence, the extended period of will not apply. We are of the view that since this vital letter dated 30.08.2007 was not dealt with by the lower authorities, entire matter on limitation needs to be reconsidered by the adjudicating authority. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority for passing a fresh order. The appeal is allowed by way of remand to the Adjudicating Authority."

From the above observation in the remand proceeding, the adjudicating authority was to decide the invocation of larger period of demand considering the verification report given by the Range Superintendent. We find that the case on the merit was that the appellant was manufacturing and clearing the machine declaring the same as "Relax Drum Washer machine" under the belief that the same is covered under exemption Notification No 06/2006-CE under the description of "Relax Conveyer drying machine"

4.1 As regard the appellant's belief whether it is the bona fide or otherwise it is observed that it is not only the appellant but there are other manufacturers also who were under the bona fide belief that the goods in question is covered under the exemption Notification No 06/2006-CE . It is evident from the case of Accurate Trans Heat Pvt Ltd (supra), in that case also the assessee for the same machine were claiming the exemption notification. Moreover, when the appellant applied for the central excise registration, the manufacturing was going on and during that period the Range Superintendent on the direction of the Jurisdictional Assistant Commissioner carried out the verification. In the said verification report at para 3 categorically stated that the product declared by the unit were exempted under notification no 06/2006-CE (Sr no -3 list 2). It was also mentioned that the said product has been imposed duty vide notification No 06/2007 dated 01.03.2007.

4.2 From the said verification it is clear without any doubt that the range superintendent has verified the manufacturing activity physically and thereafter given the report that the product which is manufactured by the appellant is eligible for exemption under notification No. 06/2006-CE. The appellant thereafter filed ER- 1 return on 27.02.2008 therefore, all the information regarding the nature of goods claimed for exemption notification was within the knowledge of the department. In our view once an assessee claim exemption notification and the same is in the knowledge of the department, the department firstly to do the proper verification to ascertain whether the goods on which exemption is claimed is covered under the notification or otherwise. The belief of an assessee may be right or wrong but it is incumbent on the department to ascertain the correctness of the eligibility of the exemption notification. Therefore, by declaring the goods under exemption there cannot be a charge of suppression of fact on the part of the appellant. We also find that in the identical case, this tribunal in the case of Accurate Trans Heat Pvt Ltd (Supra) held that there is no suppression of fact and the demand of extended period was set aside. The present case is on better footing on the ground that the superintendent has carried out the verification and specific report in respect of the claim of exemption notification No 06/2006-CE was reported. The judgment in the case of Accurate Trans Heat Pvt Ltd is reproduced below:-

> *''These appeals have been filed by M/s Accurate Trans Heat Pvt Ltd and Shn Re Derger against order of Commissioner confirming the demand of Central Excise duty on Drum washer machine/relax drum machine by denying exemption Notification No 6/2002-CE dated 1.3.2002 and Notification No 6/2006-CE dated 1.3.2006, interest and imposition of penalty*
>
> *2. Learned Counsel for the appellant pointed out that the appellants are engaged in manufacture of Drum washer machine/relax drum machine and claimed Nil rate of duty under Notification No 6/2002 date 1.3 2002 Sr No 193 and Sr No. 5 of List 6 Sr No 193 of the Notification exempts machine ore equipment specified in List 6 of the said notification from full Central Excise duty. Sr. No 5 of the said List read as under*
>
> > *"5 Relax drum/conveyer drying machine (1) Drying range. (ii) Float aryer, (ii) Loop dryer. (iv) Drum dryer, (v) Jet dryer, (vi) Rapid dryer"*
>
> *2.1 He pointed out that subsequently vide Notification No. 6/2006, the said exemption was continued. The said exemption was withdrawn and duty of 8% imposed by virtue of Notification No. 8/2007-CE dated 13.2007 when the appellants started paying duty Learned Counsel claimed that the product manufactured by them Drum washer machine/relax drum washer machine is covered by the description appearing in Sr. No. 5 of the List 6 of the notification. He argued that list attached to the Notification wee based on technical/trade names of such machines However, a machine is called or described by various names. He relied on the Chartered Engineer's certificate and report dated 10.2.2009 of Man Made Textile Research Association (MANTRA) in the said report, the terms Relaxation Shrinkage and Residual Shrinkage have been defined and following conclusion has been reached:-*
>
> > *"From the above discussion, we certify that the Relax Drum machine is used for relaxation of fabric, in particular hign twisted polyester filament fabric, which also enhances the quality of the fabric in terms of bulk, nandle and give Dani, Georgette, Chiffon, etc effects*
>
> *2.2 He also relied on the report of SASMIRA dated 20 2 2009 wherein after examining the term 'relaxation', 'residual shrinkage and "shrinkage following certificate has been given -*

> *"Therefore, we certify that the Relax Drum Machine is used for relaxation of fabric which enhances the quality of the fabric in terms of bulk and handle, as well as it gives effect like Dani, Chiffon, Georgette etc."*

Learned Counsel argued that the machine are squarely covered by the description appeared in the notification

2.3 He further argued that there are no findings in the impugned order on limitation He claimed that they had correctly described the machine in their returns filed during the period and therefore there was no suppression

3. Learned AR relies on he decision of the Tribunal in the case of Bhagyarekha Engineers Pvt Ltd. - 2014 (309) ELT 108 (Tri-Ahmd), wherein in identical circumstances after examining the report of SASMIRA and MANTRA, the matter has been decided against the assessee.

4. We have gone through the rival submissions. We find that the Revenue has invoked extended period of limitation. The appellants have, during this period, filed returns claiming the benefit of notification. There is no assertion that they have mis-declared the product. Their unit was also audited numerous times. The description in the returns is 'Relax drum machine and the benefit of notification has been claimed. In these circumstances, it cannot be said that the appellants had suppressed anything or had an intention to evade payment of duty

5. The appeals are consequently allowed on limitation.''

4.3 In view of the above judgment coupled with the particular facts of the present case there is no doubt in our mind to hold that there is no suppression of fact with intent to evade payment of duty on the part of the appellant. In the present case the demand for the period 15.04.2004 to February 2008 was raised by the Show cause notice dated 06.04.2009 hence the entire demand is prior to normal period of one year, therefore the same is hit by the limitation. Accordingly we hold that the demand raised in the SCN and confirmed by the Adjudicating Authority is not sustainable being time barred.

4.4 As regard the reliance placed by the Learned AR on the judgments , on going through such judgments we find that on the face of the verification carried out by the Superintendent, the facts of those cases are different from the facts of the present case. Therefore the ratio of the judgments relied upon by the Learned AR cannot be made applicable to the facts of the present case. Moreover, the issue of time bar being a matter of fact, the fact of each case vary from one to another.

5. As per our above discussion and finding the impugned order is set aside, appeal is allowed with consequential relief, if any, in accordance with law.

(Pronounced in the open court on 07.06.2022)

RAMESH NAIR
MEMBER (JUDICIAL)

RAJU
MEMBER(TECHNICAL)

Geeta