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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 12445 of 2013

(Arising out of OIA-117/2013-AHD-II-CE/AK/COMMR-A-/AHD Dated- 17.06.2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Gurjargravures Pvt Ltd **........Appellant**
47/48 ODHAV INDUSTRIAL TOWNSHIP,
ODHAV, AHMEDABAD-GUJARAT

VERSUS

C.C.E. Ahmedabad-ii **........Respondent**
CUSTOM HOUSE, FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

AND

Excise Appeal No. 13899 of 2013

(Arising out of OIA-181/2013-AHD-II-CE/AK/COMMR-A-/AHD Dated- 26.09.2013 passed by Commissioner of Central Excise-AHMEDABAD-II)

Gurjargravures Pvt Ltd **........Appellant**
47/48 ODHAV INDUSTRIAL TOWNSHIP,
ODHAV, AHMEDABAD-GUJARAT

VERSUS

C.C.E. Ahmedabad-ii **........Respondent**
CUSTOM HOUSE, FIRST FLOOR,
OLD HIGH COURT ROAD, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

APPEARANCE:
Shri S. Bissa, Advocate appeared for the Appellant
Shri Tara Prakash (Assistant Commissioner) Authorised Representative for the Respondent

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

Final Order No. A/ 11121-11122 /2022

DATE OF HEARING:06.09.2022
DATE OF DECISION:06.09.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of 'Perforated Nickel Cylinders (Screen)' amongst other products classifying the same under Chapter heading 84425031 and was paying Central Excise duty @10% on clearances till 16.03.2012 and @12% from 17.03.2012 onwards. The appellant had vide letter dated 13.04.2011 intimated the Jurisdictional Assistant Commissioner that in the light of amendment of Notification No. 6/2006-CE dated 01.03.2006 by Notification No. 6/2011-CE dated 01.03.2011, the aforesaid commodity had been added under item 41 in List II of Notification No. 6/2006-CE as parts or components of the machinery specified at items No. 1 to 40 above. The rotary/ flat bed screen printing machines were specified at Sr. No. 26 of the said list, that the cylinders manufactured by them are used in the said rotary/ flat bed screen printing machines. That their cylinders have designs inscribed on them and when the cylinders were mounted on the machine, printing of the relevant design takes place and the said commodity classified as cylinders and other printing components under Heading 84425031. The chapter heading 8443 refers to printing of machines by means of plates, cylinders and other printing components of heading 8442; that sub heading 84439100 refers to parts and accessories of printing machines used for printing by means or cylinders and other printing components of heading 8442 and hence the aforesaid commodity would qualify for concessional rate of duty under List 2 as components of Rotary printing machine and will attract duty @5% concessional rate of duty contained in entry No. 3 of Notification No. 6/2006-CE, accordingly they were clearing their product @5% concessional rate of duty. On scrutiny of their monthly returns, it was observed that during the period from January 2012 to June 2012, it appears that the appellant had considered and cleared the product screens as parts and components and accordingly, even though the head 10% duty upto 16.03.2012 paid 5% of the duty out of the said 10% under protest. Similarly, from 17.03.2012 onwards instead of paying Central Excise duty @12% regularly, the appellant was paying 6% as regular payment and the remaining 6% (basic) from under protest. Therefore, it appears that the appellant was considering their product i.e. Screen as parts and components of machinery, Rotary flat bed, screen printing machine which attract excise duty @5% upto 16.03.2012 by virtue of Notification No. 18/2012-CE dated 17.03.2012 even though the product was rejected to be considered as accessories of the machinery attracting excise duty @10% upto 16.03.2012 and @12% from 17.03.2012 onwards.

2. The appellant was issued a Show Cause Notice dated 18.01.2013 proposing recovery of duty amounting to Rs. 37,47,034/- under Section 11A(1) of the Central Excise Act, 1944. It also proposes as to why the claim of protest not vacated and the duty amount of Rs. 37,47,034/- paid under protest by them on removal of goods "Nickel Perforated Rotary Screen" should not be adjusted/ appropriated against the above said demand in view of wrong availment of benefit of Notification No. 6/2006-CE dated 01.03.2006 as amended vide Notification No. 6/2011-CE dated 01.03.2011 which was superseded by Notification No. 12/2012-CE dated 17.03.2012. The said Show Cause Notice was adjudicated vide order in original wherein the adjudicating authority confirmed and appropriated the demand and also ordered the claim of protest in the matter by the appellant stands vacated. Being aggrieved by the said order in original, the appellant filed appeal before Commissioner (Appeals), the Learned Commissioner (Appeals) concurring with the views taken by the adjudicating authority, rejected the appeal and upheld the order in original, therefore, the present appeals filed by the appellant.

3. Shri S. Bissa, learned counsel appearing on behalf of the appellant reiterated the grounds of appeal. He further submits that this issue is no longer under dispute as the same has been decided by this Tribunal. He placed reliance on the following judgements:

- Stovec Industries Ltd. (Order No. A/12556-12557/2021 dated 30.11.2021)
- Mewar Bartan Nirman Udyog 2008 (231) ELT 27 (SC)
- Indo-Japanese Industries Ltd. 1986 (24) ELT 527 (Cal.)
- Precision Rubber Industries 1990 (49) ELT 170 (Bom.)
- Jyoti Ltd. 1979 (4) ELT (J546)(Guj.)
- UOI v Jyoti Ltd. 1997(96) ELT A73 (SC)
- Bajaj Auto Ltd. 1989 (44) ELT 763 (Tri.)
- Manipal Academy of Higher Education 2005 (190) ELT 113 (Tri. Bang.)

4. Shri Tara Prakash, learned (Assistant Commissioner) Authorized Representative appearing on behalf of the Revenue reiterates the findings of the impugned order. He relied upon the decision of this Tribunal in the case of **Commissioner of Central Excise Vapi vs Harish Industries Engineers 2008 (223) ELT 651 (Tri. Amd.)**.

5. We have carefully considered the submissions made by both the sides and perused the records.

6. We find that in the present case, the limited issue to be decided by us is that whether the appellant's products, namely, 'Perforated Nickel Cylinders (Screen)' is eligible for concessional rate of duty in terms of Notification No. 6/2011-CE dated 01.03.2011 or otherwise. We find that the very same issue has been decided by this Tribunal vide Order No. A/12556-12557/2021 dated 30.11.2021 in the matter of Stovec Industries Limited. The relevant order is reproduced below:

> *"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 Bartan Nirman 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		

	lithographic stones, prepared for printing purposes (for example, planed, grined 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).		
8442 5010	---Plates and cylinders…………………………………………………….	Kg.	12%
8442 5020	---Lithographic plates………………………………………………………	Kg.	12%
	---Plate, cylinder and lithographic stones prepared for printing proses:		
8442 50 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."

From the above decision of this Tribunal, it can be seen that the issue involved and facts related thereto are absolutely identical, accordingly, the ratio of the above decision is directly applicable to the present case. Consequently, the appellant are entitled for the exemption Notification 6/2011-CE dated 01.03.2011 and subsequent exemption under Notification No. 12/2012-CE dated 17.03.2012. As regard the heavy reliance placed by the Revenue in the case of Harish Industries Engineers (supra), we find that in the said case, the limited issue decided by this Tribunal is classification of the goods. However, in the present case, the dispute related to eligibility of exemption notification which has been conclusively decided by this Tribunal in the above cited judgement. Therefore, the decision in the case of Harish Industries Engineer is clearly distinguished. As per our above discussion and finding, since the appellant is entitled for the exemption Notification, the impugned orders are not sustainable. Accordingly, the impugned orders are set aside. Appeals are allowed with consequential relief.

(Operative part of the order pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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