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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 743 of 2012-DB

[Arising out of Order-in-Original/Appeal No 60-61-2012-BVR--COMMR-A-RBT-RAJ dated 19.06.2012 passed by Commissioner of Central Excise-BHAVNAGAR]

Jay Dan Gigev Welding Works **.... Appellant**
Amreli Road, Savarkundla,
AMRELI, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Bhavnagar **.... Respondent**
Plot No.6776/B-1, Siddhi Sadan, Narayan Upadhyay
Marg, Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE :

None for the Appellant
Shri Kalpesh P Shah, Superintendent (AR)for the Revenue.

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

DATE OF HEARING : 29.11.2022
DATE OF DECISION: 06.12.2022

FINAL ORDER NO. A/11863 / 2022

RAMESH NAIR :

The issue involved in the present case is that whether the appellant is entitled for SSI exemption Notification No. 8/2003-CE dated 01.03.2003 as amended by Notification No. 8/2006-CE dated 01.03.2006 in respect of power driven pumps which does not bear BIS specification and the appellant did not obtain ISI certificate.

2. When the matter was called none appeared on behalf of the appellant. From the record it is observed that this matter was earlier listed on 29.08.2022, 28.09.2022 and on 01.11.2022. On two occasions, none appeared and on the last occasion the assessee sought adjournment. Today

neither any adjournment request nor anyone appeared therefore, the appeal is taken up for disposal.

3. Shri Kalpesh P Shah, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the impugned order. He submits that there is mandatory requirement for exemption under SSI notification that power driven pumps should conform to BIS standard. In the present case, admittedly there is no ISI certification to confirm BIS standard as required for allowing the exemption notification.

4. We have carefully considered the submissions made by learned Authorised Representative and perused the record. We find that the limited issue to be decided is that the appellant's product i.e. power driven pump (Water Turbine Pumps) being not in conformation to BIS standard and they do not possess ISI certificate to this effect, whether the product is eligible for SSI exemption notification 8/2003-CE as amended by Notification No. 8/2006-CE or not. We find that admittedly the appellant's product is not in conformation to BIS standard as specified in the notification. They have not obtained any ISI certificate. Therefore, exemption of SSI notification 08/2003-CE as amended, is not admissible to the appellant. This issue has been considered in the following judgments:-

(a) Borana Pumps vs. Commissioner of CGST & C.Ex., Jodhpur – 2021 (378) ELT 189 (Tri. Del.)

(b) Super Pumpms Pvt. Limited vs. CCE, Bhopal – 2016 (341) 345 (Tri. Del.)

This tribunal in the case of Coronation Industries (Appeal No. E/1091 of 2011) vide order No. A/11111/2022 dated 08.09.2022 has also considered and decided the issue. The relevant portion of the order is reproduced as below:-

> "**4.** We have carefully considered the submission made by Learned AR and perused the records . We find that there is a clear admission of Shri Manubhai Nanjibhai Dhola, Partner of the Appellant who confirmed that the product manufactured by them i.e. Water Turbine Pumps do not conform to the standard Specified under BIS i.e. they have not obtained ISI Certification for their product. According to Sr. No. (xi) of Annexure to Notification No. 08/2003- CE dated 01.03.2003 the benefit of said notification is not available to such pumps .Accordingly we are of the view that the appellant is not entitled for exemption Notification No. 08/2003- CE dated 01.03.2003 hence demand was correctly confirmed. Accordingly, the demand along with interest is upheld. As regard the equal penalty imposed by the lower authority under section 11AC of the Central Excise Act, 1944 we find that the appellant has not been extended the option of reduced penalty of 25%. Accordingly, the penalty under Section 11 AC stands reduced to 25% subject to payment of duty and interest and 25% penalty within one month from the date of this order.
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> **5.** Accordingly the impugned order is modified to the above extent. Appeal is dismissed in the above terms."

5. In view of the above judgments, since the appellant does not have ISI certification to conform the BIS Standard, the appellant is not eligible for SSI exemption Notification No. 8/2003-CE.

6. As regards the cum-duty price claimed by the appellant, we find that as of now the issue has been settled that in any case where the duty is demanded, the principle of cum-duty price shall be applicable. The appellant have taken support from the decision of Hon'ble Gujarat High Court in the case of *Poonam Plastic Industries – 2011 (271) ELT 12 (Guj.)*. Therefore, we are of the view that appellant is entitled for cum-duty price benefit. Accordingly, the Adjudicating Authority shall recalculate the duty by extending the benefit of cum-duty price.

7. As per our above observation and findings, the appellant is not eligible for SSI exemption notification. Therefore, the demand of duty subject to

recalculation by extending cum-duty price benefit is sustainable. Since duty shall be re-quantified, the appellant shall be entitled to the option of reduced penalty of 25% subject to payment of re-quantified duty, interest, if any and 25% penalty within one month from the date of communication of re-quantified duty to be made by the Adjudicating Authority to the appellant. Accordingly, the appeal is disposed of in the above terms.

(Pronounced in the open court on 06.12.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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