CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.3137 of 2012

(Arising out of Order-in-Appeal No.191-CE/MRT-I/2012 dated 17/07/2012 passed by Commissioner (Appeals) Central Excise, Meerut-I)

M/s Faith Innovations Ltd., ...Appellant
(Village-Salempur, Rajputana Industrial Area,
Near Ramnagar District-Haridwar Uttarakhand)

VERSUS

Commissioner of Central Excise, Meerut-I ....Respondent

(Mangal Pandey Nagar, Opp. to CCS University,
Meerut-250005)

APPEARANCE:

Shri Atul Gupta, Advocate & Shri Prakhar Shukla, Advocate for the Appellant
Shri Sarweshwar T. Khairnar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70097/2023

DATE OF HEARING : 28 August, 2023
DATE OF DECISION : 28 August, 2023

P.K. CHOUDHARY:

The facts of the case in brief are that the Appellant is engaged in the manufacture of Air Purification Equipment falling under Chapter 84 of the First Schedule of the Central Excise Tariff Act, 1985. The Appellant set up its unit pursuant to the industrial policy announced for the states of Himachal Pradesh and Uttarakhand at Khasra No.1028, Village Salempur, Rajputana Industrial Area, near Ramnagar, District-Haridwar, Uttarakhand. It is not in dispute that by virtue of it being located in the State of Uttarakhand and producing the goods eligible for exemption, the unit of the Appellant was entitled to avail exemption from payment of excise duty in respect of the goods manufactured by them under Notification No.50/2003-CE dated 10.06.2003. Undisputedly, in order to avail the benefit of area-based Exemption Notification, the Appellant filed declaration in the office of the jurisdictional Superintendent of Central Excise, Range Roorkee on 15.09.2009 contemplating the commencement of commercial production with effect from 21.09.2009. Thereafter, the Appellant commenced commercial production on 24.09.2009 and availed exemption under the Exemption Notification No.50/2003. The Appellant also filed quarterly returns required to be filed under Notification No.4/2008-CE (NT) as per Rule 12 of Central Excise Rules, 2002. No objection or response was received on the filing of above referred declaration and quarterly returns. However, on oral objection received in the end of March, 2010, the Appellant submitted the declaration along with letter dated 15.09.2009 with the jurisdictional Assistant/Deputy Commissioner on 31.03.2010. Vide letter dated 07.06.2010, the Appellant was informed that as the declaration under the Exemption Notification has been filed before the Assistant Commissioner on 31.03.2010, the Appellant is not eligible for exemption for the period upto 31.03.2010. In light of the same, the Appellant was directed to deposit duty on goods cleared upto 31.03.2010. Show cause notice dated 08.10.2010 was issued to the Appellant proposing to demand duty amounting to Rs.47,16,484/- along with interest and penalty for the period 24.09.2009 to 31.03.2010. The learned Additional Commissioner passed the Order-in-Original dated 05.10.2011 upholding the demand as proposed in the show cause notice. The Appellant filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) vide the Order-in-Appeal confirmed the demand of INR 47,16,484/- on the ground of non-filing of declaration with the Jurisdictional Assistant/Deputy Commissioner under Notification No.50/2003 dated 10.06.2003. However, he gave benefit regarding "cum duty value" and set aside the penalty. Being aggrieved, the Appellant has filed the present appeal before the Tribunal.

2. Learned Advocate appearing on behalf of the Appellant submitted that Notification No.50/2003 dated 10.06.2003 was amended vide Notification No.76/2003 dated 05.11.2003 whereby a proviso was inserted that a manufacturer shall inform in writing to the jurisdictional Deputy Commissioner of Central

Excise or Assistant Commissioner of Central Excise with a copy to the Superintendent of Central Excise giving particulars such as the name and address of the manufacturer, location of factories, description of inputs and specified goods produced etc. It is submitted that the present issue has been decided in favour of the Appellant in the case of Analogics Tech India Ltd. vs. Commissioner of Central Excise, Meerut, 2015 (10) TMI 1832 – (CESTAT New Delhi).

3. Learned Departmental Representative appearing on behalf of the Revenue justified the impugned orders and submitted that the appeal filed by the Appellant being devoid of merits may be dismissed.

4. Heard both sides and perused the appeal records.

5. We find that the Appellant filed the declaration as required vide the Exemption Notification before the Range Superintendent on 15.09.2009 which stands duly acknowledged by the Department. The only issue involved is that the said declaration should have been filed with the jurisdictional Assistant/Deputy Commissioner as per proviso (ii) of Notification No.50/2003 dated 10.06.2003. It is also an undisputed fact that the Appellant has filed quarterly returns as prescribed under Rule 12 of the Central Excise Rules, 2002. We find that the area-based exemption under Notification No.50/2003-C.E. cannot be denied for failure to file declaration if the assessee filed monthly returns and commenced production before 31.03.2010. Reliance in this regard is placed on the decision of Analogics Tech India Ltd. vs. CCE, Meerut (Supra) wherein it was held that the benefit of Notification No.50/2003-CE cannot be denied due to failure in filing declaration if the assessee had filed monthly returns and commenced production before 31.03.2010. The Tribunal also held that filing of returns showing description, quantity of goods manufactured and availment of exemption especially when the factory is located in notified Khasra and production commenced before the cut of date i.e.,31.03.2010, shall be considered as an adequate compliance of the condition in Notification No.50/2003 dated 10.06.2003. We find that the issue in the present case is squarely covered by the decision of the Tribunal in the case of Analogics Tech India Ltd. vs. Commissioner of Central Excise, Meerut (supra) relevant portion of the decision produced below:-

"3. Both the sides agree that the goods manufactured by the Appellant are the meter reading devices which would be classifiable as "Data Processing Machine" under Heading No.8471 of the Central Excise Tariff. There is no dispute that the Appellant's unit is located in the area notified in the Notification No.49/2003-C.E. The first ground for denial of exemption is that the copy of the declaration was sent only to the Superintendent and not the Assistant Commissioner. In our view, while for availing exemption Notification Nos.49/2003-C.E. and 50/2003-C.E., filing of the declaration in prescribed format to Assistant/Deputy Commissioner, with a copy to the Superintendent of Central Excise is mandatory and as the exemption is applicable only from the date of filing of the declaration, in our view, this condition for availing the exemption has been substantially complied with by sending the declaration to the jurisdictional Superintendent of Central Excise about which there is no dispute. The jurisdictional Superintendent could have passed to the Assistant Commissioner's office and just because the copy of the declaration was not sent by the assessee to the jurisdictional Assistant Commissioner/Dy. Commissioner, the exemption cannot be denied."

The above decision was followed in the case of Analogics Tech India Ltd. vs. Commissioner of Customs and Central Excise, Meerut 2019 (7) TMI 1781 – CESTAT New Delhi. Further in the case of Security Engineering Products vs. CCE, Chandigarh 2018 (5) TMI 469 – CESTAT Chandigarh, it was held that the Appellant would be entitled to benefit of exemption under Notification No.50/2003 as communication submitted to any authority under establishment was to be treated as submitted to the head of office. Relevant portion of the decision is reproduced below:-

"31. Having considered rival contentions and on perusal of the record, I find that the Appellant has got an acknowledgement of having a letter addressed to Assistant Commissioner intimating availment of the said Notification No.50/2003 and a copy of which having acknowledged by Sector Officer and that the Sector Officer is part and parcel of establishment of Assistant Commissioner, therefore, as

held in various pronouncements that a communication submitted to any authority under establishment was to be treated as submitted to the head of office. Therefore, I hold that the letter acknowledged by Sector Officer is an intimation submitted to the Assistant Commissioner. If that is not held so than in further each and every acknowledgement is to be given by Assistant Commissioner himself and the same will not be practical and possible. Therefore, I am of the opinion that the Appellant had filed intimation that they would be availing benefit of Notification No.50/2003 with the Assistant Commissioner."

6. We find that the facts of the present case are squarely covered by the aforesaid decisions. In view of the above discussions, the appeal filed by the Appellant is allowed with consequential benefits, if any.

(Operative part of the order pronounced in open court)

Sd/-

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS