IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/82/2011-EX[DB]

(Arising out of Order-in-Appeal No.331-CE/MRT-II/2010 dated 30/09/2010 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

Commissioner of Central Excise, Meerut-II **Appellant**

Vs.

M/s KVS INFRATECH LLP **Respondent**

<u>Appearance:</u>

Shri Rajeev Ranjan (Joint Commr.) AR for Appellant
Shri Kapil Vaish (C.A.) for Respondent

<u>CORAM:</u>

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 13/12/2017
Date of Decision : 13/12/2017

FINAL ORDER NO. – 70919/2018

Per: Anil Choudhary

The present appeal is filed by Revenue arising out of Order-in-Appeal No.331-CE/MRT-II/2010 dated 30/09/2010 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II.

2. The brief facts of the case are that the respondent – assessee had been availing area based exemption under Notification No.50/2003-CX dated 10/06/2003. They filed option to avail the benefit of said exemption with

effect from 01/01/2010 which was received in Range Office on 01/01/2010 and in Divisional Office on 04/01/2010. Subsequently they filed revised declaration dated 29/03/2010 which was received in the Divisional Office on 06/04/2010. They filed another declaration dated 31/03/2010 which was received in Range Office on 31/03/2010 and Divisional Office on 06/04/2010.

3. Vide Order-in-Original 04/05/2010, the Jurisdictional Assistant Commissioner observed that the options dated 29/03/2010 and 31/03/2010 have been received in this office on 06/04/2010 i.e. after 31/03/2003 which was the last date for exercising the said option, the benefit under the said Notifications is not admissible to the goods mentioned in above said options, namely:-

(1) Structures (exercising prefabricated building of heading 9406) and parts of structures Chapter Heading (7308);

(2) Other bars and rods of Stainless Steel (7222);

(3) Wire of Stainless Steel (7223);

(4) Other bars and rods (7228); and

(5) Wire of other alloy steel (7229).

4. Aggrieved by the said order the respondent – assessee filed an appeal to the Commissioner (Appeals),

who was pleased to allow the appeal. He observed that the appellant had filed options which were received either in the Division or in the Range Office. The options dated 29/03/2010 and 31/03/2010 were received in the Division office on 06/04/2010 after the due date whereas the option dated 31/03/2010 was received in the Range office on 31/03/2010 within the stipulated time. The description of goods mentioned in the option dated 29/03/2010 were also included in the option dated 31/03/2010. Though the option dated 31/03/2010 were received in the Division office after the due date but the same was received in the range office within the due date. Thus, fulfilled the one of the condition as laid down in proviso (ii) of the said Notification. The receipt of option in the Range office is sufficient to claim the exemption from the payment of duty on the goods mentioned in the option dated 31/03/2010 which can be treated as receipt by the department in due time i.e. before the first clearance of the declared goods. As per the option, it is seen that the commercial production was started on 01/01/2010 which also fulfilled the condition laid down in Para-2(a) of the said Notification.

5. Aggrieved by the said order, the Revenue has filed the said appeal on ground that the Notification

specifically provided that the exemption contained in the said Notification shall apply subject to the condition that the manufacturer shall exercise his option in writing before the first place and such option shall be effective from the date of exercise of the option and inform in writing to the Jurisdictional DC/AC as the case may be. It has further been submitted that the options dated 29/03/2010 and 31/03/2010 had been received in Divisional Office on 06/04/2010, after the last date for exercising the said order i.e. 31/03/2010. It has therefore been submitted that the party is not eligible for the benefit of said Notification.

6. The learned A.R. for Revenue has supported the grounds of appeal.

7. The learned counsel for the respondent submitted that there is no dispute that respondent had complied with the conditions of Notification inasmuch as the respondents had commenced the commercial production in January, 2010; the intimation dated 01/01/2010 had admittedly been received in the Range Office as well as Divisional Office in January, 2010; intimation dated 31/03/2010 included the products mentioned in intimation dated 29/03/2010; intimation dated

31/03/2010 have been received in Range Office on 31/03/2010. He further submits that Board Circular dated 20/12/2010 allowed addition in products even after 31/03/2010; their case is covered by following decisions of this Tribunal in the case of Maha Lakshmi Packages vs. CCE, Chandigarh-I 2015 (329) E.L.T. 823 (Tri.-Del.) and Packaging India Pvt. Ltd. vs. CCE, Meerut 2013 (294) E.L.T. 246 (Tri.-Del.).

8. Having considered the rival contention and on perusal of records we find that there is no dispute that respondent – assessee had setup its industrial unit in January, 2010 itself and had submitted intimation also. With regard to the requirement of intimation, the relevant portion of the Notification reads as under:-

"(i) The manufacturer who intends to avail of the exemption under this Notification shall exercise his option in writing before effecting the first clearance and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;

(ii) The manufacturer shall, while exercising the option under condition (i), inform in writing to the Jurisdictional

Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise giving the following particulars, namely…..”

9. From perusal of aforesaid provision of Notification, we note that intimation in required to be given to the AC/DC as well as to Superintendent. In the present case intimation to the Superintendent had admittedly been given before the due date i.e. 31/03/2010. We therefore, hold that the receipt of intimation in the Range Office is sufficient to claim the exemption from the payment of duty on goods mentioned in the intimation dated 31/03/2010. We do not find any infirmity in impugned order and accordingly dismiss the appeal filed by the Revenue. We uphold the impugned order to be legal and proper. The respondent – assessee shall be entitled for consequential relief, as per law, if any.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Anil Choudhary)**
Member (Technical)	**Member (Judicial)**

Lks