IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
<u>REGIONAL BENCH : ALLAHABAD</u>

E/906/2009-EX[DB] & E/907/2009-EX[DB]

(Arising out of Order-in-Original No.12/COMM/MP/2008 dated 31.12.2008 passed by Commissioner of Central Excise, Kanpur.)

Saraswati Beads Industries
Sri Ram Maheshwari, Partner

…APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Rajesh Chhibber (Advocate) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

<u>DATE OF HEARING/DATE OF DECISION : </u>05.07.2018

<u>FINAL ORDER NO.71359-71360/2018</u>

Per Mrs.Archana Wadhwa :

After hearing both the sides we find that the appellants are engaged in the manufacture of Glass Beads, which are totally exempted from payment of duty of Excise. In the course of manufacture of such Glass Beads, Glass Tubes come into existence. The appellant was also not paying any duty on the said Glass tubes, which were further being used captively for the manufacture of Glass Beads on the ground that such Glass Tubes were being manufactured by them by Mouth Blowing process, which was exempted under Notification No.6/2002-CE dated 01.03.2002.

2. The appellant factory was visited by the Central Excise officers on 12.07.2007, and it was found that the appellants were using a compressor for the manufacture of Gloss Tubes. As the Glass Tubes were not being manufactured by Mouth Blowing process and as such the same were not exempted, Revenue entered a view that such Glass Tubes are required to discharge their duty liability inasmuch as the same are being captively used for production of an exempted product.

3. After further investigation, proceedings were initiated against the appellant by way of issuance of show cause notice dated 07.07.2008 raising demand of duty in respect of Glass Tubes for the period April, 2003 to July, 2007 by alleging that the appellant had used compressor for blowing of the Glass Tubes instead of their claim that the same have been produced by Mouth Blowing process, and by invoking the extended period of limitation.

4. It is seen that during the adjudication proceedings, the appellant took a categorical stand that the compressor in question was purchased by them only on 31.03.2007 and as such the production of Glass Tubes with the said compressor was effected from the said date only. Prior to the installing of compressor, the Glass Tubes were being manufactured by Mouth Blowing process and was fully exempted from payment of duty in terms of Notification No.6/2002-CE dated 01.03.2002. In support of their

contention that prior to the said date, the Mouth Blowing process was being adopted by them, they produced on record the compensation suit filed by one of their employee before the Labour Court and award of compensation granted by the Labour Court; Statement of some of workers recorded by the investigating officers was also to the effect that prior to 01.04.2007 the Mouth Blowing process was adopted by them for the blowing of the Glass Tubes. As regards the subsequent period, the appellant submitted that though the Glass Tubes were manufactured with the help of compressor and would be dutiable but no duty was being paid by them as they were falling within the Small Scale Exemption Notification.

5. The Adjudicating Authority did not find favour with the above contention of the assessee as regards the Labour Court Suits by the laborour for grant of compensation on account of the work done by them by Mouth Blowing process. He observed that no such compensation documents stands produced before him. As regards the purchase of the compressor and the bill produced by the appellant, he observed that inasmuch as the same was purchased on 31st March, 2007 i.e. the last day of the financial year, it seems that the same was manipulated bill. Accordingly, he rejected the above stand of the appellant and affirmed the duty to the extent of Rs.41,03,522/- along with imposition of penalties on both the appellants.

6. We have heard the learned Advocate Shri Rajesh Chhibber appearing for appellants and Learned A.R. Shri Mohammad Altaf appearing for Revenue.

7. On going through the impugned order, we find that there is enough evidence on record to establish that prior to the date of purchase of the compressor, the Mouth Blowing process was being used by the assessee for conversion of glass into Glass Tubes. Statement of employee of the appellant, is to the effect that the manufacturing unit has started using the compressor from 01.04.2007 and prior to the said date, Glass Tubes were being manufactured by Mouth Blowing process. However, the adjudicating authority has also dismissed the above statement of the employee on the short ground that such facts were not brought to the notice of the visiting officers on the day of visit itself. Similarly, as regards the labour suit by another employee, which the appellant brought on record to support their contention that Mouth Blowing process was being adopted by them prior to 01.03.2007 and some of their employees have also gone to the labour Commissioner for payment of compensation, he observed that the appellant had only placed the documents showing settlement of the case by way of grant of compensation but no such compensation amount of details of cheque/DD have been submitted by them. Though, he noted that admittedly such compensation claim was going in the Labour Court, but the reasoning adopted by the Commissioner that cheque/DD number etc. was not given, can not be appreciated.

However, the crux of the issue relates to the date of purchase of compressor. Admittedly, the appellant has produced a bill dated 31.03.2007 issued by Rathi Industries, showing the sale purchase of the compressor. The adjudicating authority has simpliciter dismissed the same on the ground that the same was purchased on the last date of the financial year and as such, was manipulated. However, we find that the above observations of the adjudicating authority are in the realm of assumptions and presumptions and not based upon any evidence so as to hold contrary to the appellants claim. Revenue has not bothered to investigate at the end of the seller of the compressor so as to find out the fact as to whether the compressor was actually sold on the said date or not. We also note that there is no restriction on sale purchase activities on the last date of financial year. No investigation was made by revenue, in which case the bill produced by the appellant has to be accepted as the correct reflection of facts.

8. In view of the forgoing, we agree with the appellants that the manufacturing process in their unit have been done with the help of the compressor only with the effect from 01.04.2007, inasmuch as there is no other contrary evidence reflecting on the fact that compressor was being used in the factory prior to the said date. In the absence of the same it has to be held that prior to 01.04.2007 the appellant was using Mouth Blowing process for the manufacture of the Glass Tubes, which process granted them exemption in terms of Notification No.06/2002.

9. As regards the manufacture of the Glass Tubes with effect from 01.04.2007 with the help of the compressor learned Advocate agrees that the same would be dutiable inasmuch as the same were being used captively for the manufacture of the exempted final products. However, he submits that the appellant would be entitled to SSI Exemption in which case no duty liability would arise on them. For verification of the appellants said claim, which is dependent upon the computation of the clearances in a financial year, we remand the matter to the adjudicating authority to examine these facts.

10 In view of the above, we set aside the penalty imposed on both the appellants. Thus, both the appeals are disposed of in the above manner.

(Dictated and pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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