IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

E/1222/2011-EX[DB]

(Arising out of Order-in-Appeal No.25-CE/APPL/KNP/2011 dated 31.01.2011 passed by Commissioner(Appeals), Customs & Central Excise, Kanpur.)

M/s. Aakar Sheet Metals

…APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

RESPONDENT (S)

APPEARANCE

Ms.Stuti Saggi (Advocate) & Shri Bipin Garg (Advocate) for the Appellant (s)
Shri Rajeev Ranjan (Addl.Commr.) (A.R.) for the Revenue

CORAM:

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

DATE OF HEARING : 07.08.2018
DATE OF DECISION : 14.09.2018

FINAL ORDER NO.72198/2018

Per Mrs.Archana Wadhwa :

As per facts on record the appellant is engaged in the manufacture of fuel tanks and gear covers for diesel engines for their clients. As the said goods were being endorsed with the brand name of their customers, Revenue was of the view that S.S.I. Exemption being availed by the appellant, would not be available to them. As such proceedings were initiated against the appellant by way of issuance of a show cause notice dated 22.02.2010 raising demand of duty of Rs.1,90,507/- for the period 2007 to 2009-10.

2. The show cause notice stands culminated into an order passed by the original adjudicating authority, who confirmed the demand, confiscated the seized goods with an option to the appellant to redeem the same on payment of redemption fine of Rs.4,690/- and imposed penalty of Rs.1,546/- under Rule 25 of the Central Excise Rules. Equal penalty of Rs.1,90,507/- was imposed under section 11AC of the Act. The order of the original adjudicating authority was upheld by Commissioner(Appeals) and hence the present appeal.

3. Ms.Stuti Saggi, ld.Advocate appearing on behalf of the appellant has assailed the impugned order on the point of limitation inasmuch as the show cause notice was issued by invoking the extended period. By drawing our attention on the Board's Circular No.71/71/94-CX dated 20.07.1994 it stands submitted that in terms of the said Circular affixing of goods with the brand name of purchaser would not make the assessee as disentitled to the benefit of small scale Notification. The said Circular was withdrawn w.e.f. September, 2008 and as such the appellant was entertaining a *bona fide* belief in the light of the above Circular as also in the light of the various declarations of law by the Tribunal that where the goods are being manufactured for the customers with their brand name and such customers are further using the goods in the manufacture of their final product, the small scale exemption benefit cannot be denied. She also submits that necessary intimations were filed with the Revenue as regards the manufacture of the goods with the endorsed brand name of their customers.

4. We find that the issue on merits is no more *res integra* and stands settled by the Hon'ble Supreme Court's decision in the case of Kohinoor Elastics Pvt.Ltd. v. Commissioner of Central Excise, Indore [2005 (188) E.L.T. 3 (S.C.)]. It stands held in the said decision that Clause 4 of Notification No.1/93-CE does not provide that exemption is lost only for goods which are sold in the market or which reached the ultimate customers. If the goods are endorsed with the brand name of the customers, who is further using the same in the manufacture of his final product, the benefit of small scale Notification would not be available. The Hon'ble Supreme Court, in the present case over-ruled the larger Bench's decision of the Tribunal in the case of Prakash Industries v. Commissioner [2000 (119) E.L.T. 30 (Tri-LB)]. As such it is seen that the Notification benefit would not be available to the appellant. The argument of the ld.Advocate that in the case of Kohinoor Elastics referred (supra), Notification No.1/93-CE was under consideration whereas in the present case Notification No.8/2003-CE is the subject matter cannot be appreciated inasmuch as both the Notifications contain a similar Clause of non-availability of exemption in case of branded goods.

5. However, we find that with the declaration of law by the Hon'ble Supreme Court in the case of Kohinoor Elastics Pvt.Ltd. referred (supra), the larger Bench's decision of the Tribunal in the case of Prakash Industries vs. CCE, BBSR [2000 (119) ELT 30] stands not approved and over-ruled. This leads to an inevitable conclusion that prior to the decision in the case of Kohinoor Elastics, the earlier

decisions of the Tribunal including the one of larger Bench in the case of Prakash Industries were in favour of the assessee. In such a scenario, we agree with the ld.Advocate that there would be a *bona fide* belief on the part of the appellant as regards the availability of small scale exemption Notification. In the absence of any evidence to reflect upon the assessee's *mala fide*, invocation of longer period is not justified. As such we hold that the demand beyond the normal period of limitation would be barred. However, a part of the demand may fall within the limitation period for which the matter is remanded to the original adjudicating authority for re-quantification.

6. Inasmuch as we have held in favour of the assessee as regards the *bona fide* belief, we find no justifiable reasons to impose penalty upon them. Accordingly the entire penalty is set aside. Appeal is disposed of in above manner.

(Pronounced in the open Court on 14.09.2018.)

SD/ SD/

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

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