



84 and 87 of the first Schedule to the Central Excise Tariff Act, 1985.

3. Respondents filed declaration for availing exemption under Exemption Notification No.50/2003-CE dated 10.06.2003 for the first time on 12.10.2006. As declared in the declaration dated 12.10.2006, the appellant purchased brake shoes and batteries in finished condition from the manufacturers and was clearing them from their factory after doing fresh packing. Notification No.50/2003-CE dated 10.06.2003 was amended by Notification No.01/2008-CE dated 18.01.2008 which provided that the exemption contained in the Notification No.50/2003-CE dated 10.06.2003 shall not apply to such goods which have been subjected to only one or more of the following processes namely preservation during storage, cleaning operations, packing or repacking of such goods in a unit container or labeling or re-labeling of containers, sorting, declaration or alteration of retail sale price and have not been subjected to any other process amounting to manufacture in the State of Uttarakhand or Himachal Pradesh. Accordingly, appellant started paying duty on the brake shoes and batteries cleared by him after packing with effect from 18.01.2008 and kept on paying duty on such clearances till 05.05.2009.

4. Respondent vide their letter dated 05.05.2009 informed the Assistant Commissioner, Central Excise Division-Rampur

that they would stop paying duty on brake shoes and batteries with effect from 05.05.2009 as they had started undertaking activities other than those hit by Para 4 of Notification No.01/2008-CE dated 18.01.2008 and that they would avail exemption under Notification No.50/2003-CE dated 10.06.2003 as amended w.e.f. 05.05.2009.

5. Subsequently, a team of Central Excise Officers visited factory of the assessee on 19.07.2011 during which, the appellant claimed to have started process of grinding of outer diameter of Brake Shoes which amounts to manufacture (hence they are claiming exemption under Notification No.50/2003-CE dated 10.06.2003 as amended vide Notification No.01/2008-CE dated 18.01.2008) has been verified. The officers found that two grinding machines were installed but no operation was going on such machines. Further, no records of dust/scrap generated during the process of grinding of the Brake shoes was found. Officers claimed that since grinding fixture was purchased only on 22.04.2010 from M/s Magnum Auto Motive Industries, Noida, which was essential for grinding of Brake Shoes, the grinding process before 22.04.2010 was not possible.

6. Accordingly, a show cause notice bearing C. No. IV-CE(9)/CP/M-II/Escorts/39/11/5294 dated 21.05.2012 was issued to the respondents which was adjudicated by Order-in-Original No. 31/Addl. Commissioner/M-II/2013-14 dated

31.12.2013 confirming the demand of duty Rs.21,63,978/- along with interest and equal amount of penalty was also imposed under Section 11AC of the Central Excise Act, 1944.

7. Being aggrieved with the said Order-in-Original, they preferred an appeal before the Commissioner (Appeals), Customs & Central Excise, Meerut-II. The Commissioner (Appeals) vide Order-in-Appeal dated 01.07.2014 set aside the Order-in-Original No. 31/Addl. Commissioner/M-II/2013-14 dated 31.12.2013 and that the appellant is entitled to exemption under Notification No.50/2009-CE dated 10.06.2003. The said order of Commissioner (Appeals) is impugned before Tribunal.

8. After appreciating the submissions made by the learned AR and on going through the impugned order we find that the Appellate Authority has extended the benefit of exemption to the assessee by observing as under:-

*“5.2 I observe that the appellant has submitted his declaration for availing exemption under Notification No.50/2003-CE dated 10.06.2003 on 12.10.2006. However Notification No.50/2003-CE dated 10.06.2003 was amended by Notification No.01/2008-CE dated 18.01.2008 by virtue of which the appellant started paying duty on the brake shoes and batteries cleared by him after packing with effect from 18.01.2008. Appellant further informed the Department on 05.05.2009 that he would stop paying duty on brake shoes and batteries with effect from 05.05.2009 as he had started*

*undertaking activities other than those hit by Para 4 of the Notification No.01/2008-CE dated 18.01.2008. It cannot be presumed that the facility of grinding of the brake shoe did not exist in the appellant's unit merely on the basis of non operation of the unit on the particular day or non availability of burnt dust/scrap. It is an accepted fact that the officers of the Department visited the unit of the appellant on 19.07.2011 i.e., more than 2 years after the assessed informed the department about availing the exemption whereas the last operation of production of brake shoes concluded on 16.07.2011. I also observe that Department failed to negate the claim of the appellant that he never sold the said dust/scrap and had transferred the same to scrap yard in the factory. Thus non availability of burnt dust after three days does not prove that there was no production of the goods. Appellant has produced the documentary evidence in support of his claim that he is very much engaged in the activities other than those hit by Para 4 of the Notification No.01/2008-CE dated 18.01.2008. I find that the appellant has procured 07 grinding M/C Fixtures and one grinding Machine from M/s Magnum vide Invoice No. 37 dated 26.11.2008 & 41 dated 26.11.2008 respectively. Further one grinding Machine and one Fixture was also procured from M/s Sarfraj Engineering Works vide Invoice No.1289 dated 31.01.2009. Thus I do not agree with the findings of the Adjudicating Authority that the grinding fixtures were not available in the factory of the Appellant before 22.04.2010 and, therefore, grinding of unfinished brake shoes was not possible in the factory of the appellant before 22.04.2010. Regarding supply of finished brake shoe only by M/s Magnum, appellant produced copy of invoice no 40 dated 26.11.2008 evidencing the supply of 11200 sets of*

*ungrounded/unbranded brake shoes to the appellant. I observe that the Adjudicating Authority has based his findings in this regard on fact that no clearance of unfinished brake shoe was shown in the ER-1 returns of M/s Magnum and 'unfinished brake shoes' was not included in the Central Excise Registration Certificate of M/s Magnum. I find that these omissions by M/s Magnum could not lead to the fact that the ungrounded brake shoes were not supplied to the appellant by M/s Magnum. Further M/s Magnum had also not disowned the invoice said to be issued by them instead Sh. Rajat Agarwal, partner of M/s Magnum, in his statement dated 29.08.2011, has confirmed the supply of ungrounded brake shoes from November 2008. I also agree with the contention of the appellant that the department was at liberty to take samples of the said unfinished brake shoes supplied by M/s Magnum and get them tested to discover the truth about their unfinished or finished condition. But the department neither took any action against M/s Magnum for violation of the Central Excise Rules, 2002 and nor were the samples taken and tested to ascertain the facts. Accordingly, I find that there is no conclusive evidence to establish that the appellant was not engaged in the grinding of the brake shoe. Thus I hold that the appellant is involved in the grinding of brake shoes from 05.05.2009 and is entitled to exemption under Notification No.50/2003-CE dated 10.06.2003 as amended vide Notification No.01/2008-CE dated 18.01.2008."*

9. On going through the said paragraph we find that there is a finding of fact recorded by the Appellate Authority that the machines in question were purchased by the appellant under the cover of invoices referred in the said paragraph. On

the other hand, Revenue in their memo of appeal have submitted that grinding fixtures were received by the assessee only after 22.04.2010 from M/s Magnum Auto Motive Industries, Noida under Invoice No.7 dated 22.04.2010 and as such it was not possible for the assessee to do the grinding before the said date. However, the Revenue's appeal is silent on the other invoices issued by M/s Fixtures as also by M/s Magnum showing sale of the grinding machines and fixtures. Revenue has not rebutted the fact that the said machines were purchased by the assessee under the cover of invoices mentioned in the order of Commissioner (Appeals). There is no evidence produced by the Revenue rebutting above finding of fact.

As such we find no infirmity in the impugned order of Commissioner (Appeals). Revenue's appeal is accordingly rejected.

(Pronounced in Court on **11.12.2018**)

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

**Sd/-**  
**(Archana Wadhwa)**  
**Member (Judicial)**