CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 70771 of 2016-EX[DB]

(Arising out of Order-in-Appeal No. HPU/Excus/000/Appeals-I/544/2015-16 dated 29/02/2016 passed by Commissioner of Central Excise & Customs (Appeals), Meerut)

M/s Shivashakti Bio Technologies Ltd., ...Appellant

(U.S. Nagar, Uttarakhand)

VERSUS

Commissioner of Central Excise, ...Respondent

(Shaheed Park, Delhi Road, Meerut)

APPEARANCE:

Shri Y. Sreenivasa Reddy, Advocate for the Appellant
Shri Shiv Pratap Singh, Deputy Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71142 / 2019

Date of Hearing : 22/05/2019
Date of Decision : 22/05/2019

PER: ARCHANA WADHWA

The appellant is a unit, engaged in the manufacture of Micronutrient Mixtures, Plant Growth Promoters and Bio-Fertilizers and their factory is located in Rudrapur. They were entitled to avail the area based exemption, in terms of Notification No.50/2003-CE dated 10.06.2003.

2. The appellant started their factory in the year 2009 and before the start of the same, a declaration was filed on

05.05.2009 detailing all the goods to be manufactured by them along with the classification of the same under the claim of Notification No.50/2003. After filing of said declaration, in terms of notification itself, their factory was visited by jurisdictional Central Excise Officers. As per verification report dated 19.01.2010 of the appellant is range superintendent, the products manufactured by the appellant and declared by them in the above declarations were found to be entitled to the benefit of Notification, inasmuch as, they were not covered by the negative list annexed to be produced.

3. Subsequently, the appellant's factory was visited by the Central Excise Officers on 2nd and 3rd May, 2012, who entertained a view that the products manufactured by the appellant are not classifiable under Chapter 38 but the same should be classified as "other fertilizers" falling under Heading 31.05 of the Central Excise Tariff Act. Inasmuch as, other fertilizers falling under Chapter 31 were not entitled to the benefit of area based notification, being included in the negative list attached with the notification, the revenue entertained a view that the benefit of Notification No.50/2003 was not available to them. Accordingly, proceedings were initiated against them by way of issuance of show cause notice dated 19.05.2014 i.e. after a period of more than one and half year of the date of visit, raising demand of duty for the period 2011 to 2013-14. It was alleged in the notice that the proper classification of their product is under Chapter 31 and not under 38 as claimed by them. It may be noticed here that prior to 01.03.2011, the

heading 3104 attracted nil tariff rate of duty and as such the demand in the present case was raised w.e.f. 01.03.2011 onwards.

4. The proceedings initiated against the appellant resulted in passing of the impugned order, confirming demand of duty to the extent of Rs.37.68 lakhs approximately along with imposition of penalty of identical amount. The order passed by the Original Adjudicating Authority was upheld by Commissioner (Appeals). Hence, the present appeal.

5. Learned advocate Shri Y.Sreenivasa Reddy appearing for the appellant assails the impugned order on the point of limitation as also on merits. As regards the limitation, it is his contention that the officers visited their factory during the period when they had filed declaration giving full description of the goods manufactured by them. The said declaration was verified by their range superintendent as also the process of manufacture undertaken by them was examined. On the basis of the same a detailed report was filed by their range superintendent to the Assistant Commissioner accepting the assessee's stand of claim of Notification No.50/2003. As such, he submits that in such a scenario, the invocation of longer period of limitation by the revenue is neither warranted nor justified.

As regards the demand falling within the limitation period, he has drawn our attention to various decisions of the Tribunal laying down that Micronutrient are classifiable under other than Chapter 31 based upon the constitution of the same. Specific reference was made to Tribunal decision in the case of Rupali

Chemicals Vs Commissioner of Central Excise, Jaipur 2017 (6) G.S.T.L. 161 (Tri.-Del.) Further, reliance also stands made on various precedent decisions.

6. Learned A.R. appearing for the revenue reiterates the findings of authorities bellow and submits that inasmuch as the appellants product contained Nitrogen & Potassium, they have to be classified as "other fertilizers" under Chapter 31. As regards limitation, he adopts the contentions of the authorities bellow.

7. After appreciating the submissions made by both sides and after going through the impugned order, we note that the revenue is not disputing the fact that the appellants factory is located in Rudrapur where area based exemption notification no.50/2003 is available. The said notification is in respect of all the manufactured products in the factory located in that area except the products specified in the negative list. Inasmuch as, Heading 31.02 to 31.05 fall under the negative list, the revenue by classifying the product under tariff heading 31.04 held that the appellant is not entitled to the said area based exemption notification. As such, we find that the dispute revolves around the correct classification of the products manufactured by the appellant.

8. As regards limitation, we have seen the declaration filed by the appellant on 05.05.2009, which was required to be filed in terms of the notification. As per the said notification itself prescribing procedure, the declarations filed by the assessees located in that area are required to be examined for verification. The appellant range superintendent had undertaken such

verification and has filed a detailed report dated 19.01.2010 to the appellant's jurisdictional Assistant Commissioner at Rudrapur. In the said report, the range Superintended has clearly mentioned that in order to examine the admissibility of the said notification and to verify the genuineness of the claim of the party, the factory premises of the appellant was visited along with concerned sector officer on 29.12.2009. In the said verification report he has further submitted that in respect of the Final products as declared by the party, benefit under this notification appeared to be available to them.

On receipt of the said report, the same was verified by the Central Excise Officers and no further action was taken against the assessee till the visit of the officers and the subsequent initiation of proceedings vide show cause notice dated 19.05.2014.The demand raised vide the said show cause notice is for the period 01.03.2011 to 31.03.2014. Major part of the demand is beyond the normal period of limitation. In view of the discussions and in terms of the documentary evidences placed on record and discussed in the preceding paragraphs, the entire facts were placed by the appellant before their jurisdictional Central Excise Authorities which stands examined, verified and accepted by them. As such, it cannot be said that there was any suppression or misstatement on the part of the appellant with intent to evade payment of duty. In the absence of any evidence to the contrary, we are of the view that bonafide of appellant cannot be doubted. Consequentially, the extended period could not available to the revenue. As such, we set aside of the demand falling beyond the normal period of limitation along with setting aside the penalty imposed upon the appellant.

9. As regards, the demand falling within the limitation period, we note that the appellants have referred and relied upon the various precedent decisions, which were not available at the time of adjudication. The applicability of the said decisions are required to be examined in the light of contents off the products as also the manufacturing process etc., for which purpose, we remand the matter to the Original Adjudicating Authority for fresh consideration. Needless to say that the appellant would be given an opportunity to put forth their case.

10. Appeal is disposed of in above terms.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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