CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Excise Appeal No.1157 of 2011

(Arising out of Order-in-Appeal No.02 & 03/CE/Commissioner/2011 dated 28.01.2011 passed by Commr. of Central Excise, Kanpur.)

Commissioner, Customs & Central Excise, Kanpur
(117/7, Sarbodaya Nagar,
Kanpur, Uttar Pradesh)

...Appellant

VERSUS

M/s. GPL Polyfils

(Raipur, Rania, Kanpur Dehat)

.....Respondent

APPEARANCE

Shri Sandeep Kumar Singh (Dy.Commr.) (A.R.) for the Revenue

Request for Adjournment for the Respondent

CORAM:

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

FINAL ORDER NO. 71219 / 2019

DATE OF HEARING : 17 June 2019
DATE OF DECISION : 17 June 2019

MRS. ARCHANA WADHWA :

Being aggrieved with the order passed by Commissioner, Revenue has filed the present appeal.

2. We have heard Shri Sandeep Kumar Singh, learned Dy.Commissioner(A.R.) for the Revenue. The respondents have made a request for adjournment. However, we feel that the Revenue's appeal can be disposed of even in the absence of the respondent's representative and as such proceed to decide the same.

3. As per facts on record, the respondents were engaged in the manufacture of Polyester Staple Fibre, PSF Carded, PSF waste, from PET waste/ polyester waste etc. by process of re-cycling. The said goods were being cleared by them availing the benefit of exemption from duty in terms of chapter note 1 to chapter 54 of CETA, 1985 which provide that no duty is leviable if there is no polymerization in the manufacturing of re-cycled PSF.

4. The appellant had described the process of manufacture of Polyester Staple Fibre using the old and used PET bottles, they stated that such PET bottles are crushed and converted into PET flakes. These pet flakes are then charged to extruders where they are melted and moulten polymer is passed through spinnerets to obtain tow. The tow is drawn and then cut into different lengths to obtain different PSF. Inasmuch as there is no polymerization in manufacturing of re-cycled PSF, no duty was being paid by them in view of the chapter note 1of chapter 54.

5. They were issued two show cause notices alleging that their final product is properly classifiable under chapter 55 and they are liable to pay duty of excise. The said two show cause notices were based upon Circular No.929/19/2010-EX dated 29.06.2010 issued by the Central Board of Excise & Customs in terms of the provisions of section 37B of the Central Excise Act.

6. During the course of adjudication the respondent advanced number of pleas about the re-classification of the product as also on the issue that the activity undertaken by them does not amount to manufacture. However, Commissioner vide his impugned order rejected the assessee's plea of the activity being covered by chapter note 1 of chapter 54 as also about the classification of the product under chapter 55. However, as regards the applicability of the Board's Circular, he

found that the said Circular of the Board would be effective only prospectively. For the above purposes, the adjudicating authority relied upon various decisions of the Hon'ble Supreme Court.

7. For better appreciation of the reasoning adopted by the Commissioner, we reproduce the relevant para of the impugned order:-

> "12. I find that the party has raised strong objection in their defence regarding applicability of the said Circular with retrospective effect. They further stated that it is a moot point to ponder that Section 37B of the Act is in the form of instruction issued by the Board to bring uniformity in the classification of excisable goods or with respect to levy of duty of excise on such goods as such the same cannot be made effective retrospectively. The party in support of their defence cited some case laws which are discussed as under:-
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> 12.1 In the above context, I find that in the case of Suchitra Components Ltd. vs. CCE, Guntur reported in 2007 (208) ELT 0321 (SC), the Apex Court held that :-
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>> *"a beneficial circular has to be applied retrospectively while oppressive circular has to be applied prospectively. Thus, when the circular is against the assessee, they have right to claim enforcement of the same prospectively."*
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> Further, in the case of Commissioner of Central Excise, Bangalore Vs. Mysore Electrical Industries reported in 2006 (204) ELT 0517 (SC), the Apex Court held that:
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>> *"The assessee classifying the Single Panel Circuit Breakers under Heading No.85.35 and claiming concessional rate of duty at 5% under Notification No.52/93. The said goods cleared in accordance with the approved classification list. When this approved classification was proposed to be revised to reclassify the subject goods under Heading No.85.37 of the tariff, such re-classsification can take effect only prospectively from the date of communication of the show cause notice proposing re-classification and accordingly the differential duty can be demanded only from that date. The Board's Circular F.No.32/8/94-CX (Section 37B Order) classifying the goods under Heading No.85.37 is not retrospective. The appeal is accordingly dismissed."*

Further, in the case of H.M.Bags Manufacturer Vs. Collector of Central Excise reported in 1997 (94) ELT 3 (S.C.), the Apex Court held that:

> *"Any action under Section 37B of the Central Excise Act is effective from the date of its notification or publication, therefore the Board's circular dated 24-9-1992 issued under Section 37B, re-classifying the goods, is effective from 5-11-1992 when the Trade Notice for the same was issued, consequently any demand in the present case cannot be raised for any date prior to 5-11-1992 and the time limit as provided under Section 11A is not available to the department."*

12.2 I have given deep thought to the contention keeping in view the ratio laid down by the Apex Court in the above cited case laws and being convinced that the party's contention is in consonance with the law laid down by the Apex Court, I conclude that Circular No.929/19/2010-CX dated 29.06.2010 has only prospective effects and duty liability will be effective from the date of issue of the said Circular i.e. 29.06.2010 and no duty liability can be created before the date of issue of said Circular."

The said order of Commissioner is appealed by the Revenue.

8. On going through the grounds of appeal we note that the Revenue's contention is that the adjudicating authority has erred in concluding that the said Board Circular dated 29.06.2010 has only prospective effects. As regards the various case laws relied upon by the Commissioner, Revenue has contended that inasmuch as the said Circular is not oppressive, the ratio of the said decision would not be applicable.

9. We find no merits in the above stand of the Revenue. Admittedly the goods in question were being classified under chapter 39 as also under chapter 55 in different Commissionerates and the said Circular has streamlined the classification of the goods in question. Prior to the issuance of the said Circular, the appellant was not discharging its duty liability and it is only with the issuance of the said Circular, the proceedings were initiated against them. Admittedly the Circular in question is not favourable to the assessee and as such the ratio of the various decisions of the Hon'ble Supreme Court stands correctly

followed by the adjudicating authority. No infirmity is found in the order of the Commissioner.

10. In view of the above, Revenue's appeal is rejected.

(Order pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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