CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

1st Floor, WTC Building, FKCCI Complex, K. G. Road, BANGLORE-560009

Regional Bench COURT-2

Central Excise Appeal No. 1158 of 2011

[Arising out of the Order-in-Appeal No.169/2011 dated 24.02.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore]

VACUUM TECHNIQUES PVT. LTD, ...Appellant
No.2/13, 1st Stage, 1st Phase,
Peenya Industrial Area,
Bangalore – 560 058.

VERSUS

COMMISSIONER OF CENTRAL EXCISE .....Respondent
Bangalore III Commissionerate
Central Revenue Buildings,
No.1, Queen's Road,
Bangalore – 560 001.

Appearance:
Mr. K.V. Srinivasa Prasad, Advocate Appeared for Appellant
Mr. M.A. Jithandra,, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)

FINAL ORDER No. 20472 of 2024

DATE OF HEARING: 04.06.2024
DATE OF DECISION: 04.06.2024

PER: P.A. AUGUSTIAN

The issue in the present appeal is regarding refund of Rs.2,86,750/- and interest of Rs.65,817/-. The appellant is engaged in manufacture of Rotary Vacuum Pump and other products and they were availing CENVAT credit on inputs, capital goods and input services under the provisions of Rule 3 of the CENVAT Credit Rules, 2004. They were also clearing goods to various Public Funds Research Institutions, Universities and IIT'S by availing the benefit of Notification No.10/97 CE dated 01.03.1997. During audit, it was observed that for the period from July-2006 to August-2008, they have availed exemption from payment of Central Excise duty, without proper duty exemption certificates and they were directed to pay duty with interest. As directed appellant paid excise duty along with interest under protest and subsequently filed refund application. During verification of claim, it is informed that due to natural calamity i.e. flood, they have lost the original document and they were not able to produce proper documents to support the claim of exemption made by them as directed. Thereafter Certificates were produced in support of the claim. Since documents produced by them were not signed by proper authority as per the conditions in Notification No.10/97 dated 01.03.1997, refund application was rejected. Aggrieved by said order an appeal was filed before the Commissioner (Appeal) and Commissioner (Appeal) also dismissed the Appeal. Aggrieved by said order, present appeal is filed.

3. When the matter came up for hearing, learned counsel draw our attention to the Notification No.10/97 CE dated 01.03.1997 where it is stated that such certificate should be signed by head of the institution. In relation to an institution, the Director (thereof by whatever name called), in relation to a university, the Registrar (thereof by whatever name called) and in relation to a

college, the Principal (thereof by whatever name called) is the proper authority to sign such documents.

4. Learned counsel also draw our attention to the certificate dated 24.10.2008 issued by the Registrar of Indian Institute of Science, Bangalore regarding purchase of High Temperature and High Vacuum Furnace for the purpose of research and also the certificate issued by Jawaharlal Nehru Centre for Advanced Scientific Research (A Deemed University) signed by the Administrative Officer (Equivalent to the Deputy Secretary) for purchase of Thermal Evaporator dated 30.11.2006 for value of item Rs.2,47,500/-. Learned counsel further submits the only purpose of exemption is to ensure that the goods are used for Research by such Institutions and by producing the above said certificate from Registrar and Administrative Officer, appellant has complied with the condition of Notification and eligible for the exemption.

5. Learned counsel also relied the decision of this Tribunal in the matter of **ELICO LIMITED Versus COMMR. OF CUS., C. EX. & SERVICE TAX, HYDERABAD** Reported in 2008(364) E.L.T. 374 (Tri.- Hyd.) where it is held that

> 9. On the allegation that certificate was signed by a person other than the prescribed authority, adjudicating authority has confirmed the demand of Rs.6,685/- with interest. However, in respect of this demand, there is no allegation that in the concerned clearances, appellants have not produced the certificate under the notification. The department has only found fault with the apparent discrepancy that the certificate has not been signed by the officer whose designation has been indicated in the said notification. It must be kept in mind that the intention of the Legislature in extending this exemption was only to engage research in public funded

> research institutions, universities, Institute of Technology etc. Discernibly, there is no allegation that the goods have not been received or used by the intended beneficiaries. In the circumstances, we are of the considered opinion that the person who has signed the Essentiality Certificates in these cases would have done so only after being authorized to do so by the concerned institution. Viewed in this light, Essentiality Certificates not having been signed by the Officer designated in the notification but by some other Officer of the same Institution is only a curable defect, of a technical nature, and can very well be overlooked. The demand of Rs.6,685/- on this score cannot then survive and we set aside the same.

6. Learned Authorized Representative (AR) reiterated the findings of the adjudicating/appellate authority and submits that the appellant is not eligible for refund, since they have not fulfilled the condition of the Notification. As regarding the claim of the appellant that the conditions are condonable and curable defect, Learned AR draw my attention to the decision of the Hon'ble Supreme court in the matter of **COMMISSIONER OF CUS. (IMPORT), MUMBAI Vs. DILIP KUMAR & COMPANY reported in 2018 (361) E.L.T. 577 (SC)** and submits that once there is failure on the part of the appellant to produce certificate signed by the proper authority, Appellant is not eligible for exemption as per the Notification No.10/97 CE dated 01.03.1997, Learned AR also relied following decisions in this regard;

i. Havells India Ltd. Vs. Commr. Of Central Excise, Delhi reported in 2017 (357) E.L.T. 1219 (Tri. - Del.)
ii. Krishi Upaj Mandi Samiti Vs. Commr. Of C. Ex. & S.T., Alwar reported in 2022 (58) G.S.T.L. 129 (SC)
iii. Kasturba medical college vs. Union of India 2018 (361) E.L.T. 184 (Kar.)

iv. B.P.L. LTD Vs. Commr. Of C.EX., Cochin-II reported in 2015 (319) E.L.T. 556 (SC)

V. Uttam Industries Vs. Commr. Of Central Excise, Haryana reported in 2011 (265) E.L.T. 14 (SC).

7. In re-joinder, Learned counsel for the Appellant submits that if a reasonable opportunity extended for curing the defect as point out by the adjudicating authority, Appellant can produce necessary certificate in accordance with the Notification.

8. Heard both sides. It is an admitted fact that the appellant had manufactured the goods and supplied to institutions eligible for exemption. These institutions are of stature and cannot be expected to obtain this goods without following the requirement as laid down by the Notification. Even if there is an omission on part of the appellant to produce proper certificate as per the Notification, Considering the same as curable defect, an opportunity should have been extended them to produce the same before rejecting the refund claim. Considering the above facts and also considering the condition of the Notification and the judgment of the Hon'ble Supreme Court in the matter of COMMISSIONER OF CUS. (IMPORT), MUMBAI Versus DILIP KUMAR & COMPANY (Supra), it is a fit case to be remanded to adjudication authority by extending an opportunity for the Appellant to produce certificate as per the notification.

9. Considering the above facts, impugned order is set aside. Appeal is remanded to adjudicating authority for de-novo

adjudication. Appellant is directed to produce proper certificate as per Notification No.10/97 CE dated 01.03.1997 within 3 months from date of receipt of this order and adjudication authority is directed to dispose the matter within 3 months from the date of receipt of the certificate from appellant after extending reasonable opportunity for personal hearing in accordance with the law.

(Dictated & pronounced in the open court)

(P. A. AUGUSTIAN)
MEMBER (JUDICIAL)