CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

C/325/2009-DB, C/326/2009-DB

[Arising out of Order-in-Appeal No. 03-2009 dated 28/01/2009 passed by ,]

ESSILOR INDIA PRIVATE LIMITED
#71/1, BRIGADE PLAZA, 6TH FLOOR,
S.C.ROAD, ANANDA RAO CIRCLE,
GANDINAGAR, BANGALORE

Appellant(s)

Versus

Commissioner of Customs
BANGALORE-CUS
NULL C.R. BUILDING,QUEENS ROAD,
P.B.NO. 5400,
BANGALORE - 560001
KARNATAKA

Respondent(s)

Appearance:

Shri Sachin, Advocate
V.G.B.ASSOCIATE
#166,CHICK BAZAAR STREET,
SHIVAJINAGAR,
BANGALORE -
KARNATAKA

For the Appellant

Shri Pakshirajan, Asst. Commissioner(AR)

For the Respondent

Date of Hearing: 03/08/2018
Date of Decision: 03/08/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21099-21100 / 2018

Per : S.S. GARG

In the present appeals filed by the appellants, the issue involved is classification of semi-finished spectacle lenses and eligibility for exemption Notification providing for exemption to spectacle lens. Since the issue involved in the appeals is identical, therefore, these two appeals are being disposed of by this common order.

2. Briefly the facts of the case are that the appellants are importers of semi-finished and finished spectacle lenses. In these cases, the appellants have imported semi-finished spectacle lenses vide various bills of entry and had sought clearance of the same classifying the said semi-finished spectacle lenses under Chapter subheading 9001.40.90 and 9001.50.00 respectively, of the Customs Tariff Schedule, depending on the nature of materials used in the lenses and claiming benefit of exemption under Notification No.6/2006-CE dated 1.3.2006. After examining the issue of classification of the goods in question, the Assessing Authority had concluded that the semi-finished spectacle lenses can be more appropriately classifiable under Chapter subheading 9001.90.90 of the Customs Tariff Schedule, as ‘other’ optical elements and denied the benefit of exemption contained under Notification No.06/2006-CE dated 1.3.2006, as the said benefit of exemption is available only to spectacle lenses and accordingly assessed the above said bill of entry. Aggrieved by the assessments in the Bills of Entry, appellant preferred appeal before the Commissioner (A) and the Commissioner (A) vide various impugned orders upheld the assessment of semi-finished spectacle lens classifying the same under Chapter Subheading 9001.90.90 of the Customs Tariff Schedule as “other” optical elements without extending the benefit of exemption contained under Notification No.6/2006-CE dated 1.3.2006”.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned orders are not sustainable in law as the appellate authority has proceeded on an erroneous premise of treating the imported semi-finished spectacle lenses as “ophthalmic blank”. He further submitted that “semi-finished spectacle lenses” and “ophthalmic blank” are commercially recognized to be two different and distinguished goods. He further submitted that the issue involved in the present case is no more *res integra* and has been settled by the Hon’ble apex court in favour of the appellants in their own case as reported in *2016 (335) ELT 584 (SC)* wherein the Hon’ble the apex court disposed of the bunch of appeals by the appellants and has allowed the appeals of the appellant with consequential relief. It is pertinent to reproduce para 8 & 9 of the Hon’ble apex court judgment, which is reproduced herein below:

> *“8. We may mention here that adjudicating authority as well as the CESTAT have been influenced by the fact that the goods in question were re-classified as “semi-finished spectacle lenses” and on that basis it is held that since these were semi-finished spectacle lenses and not finished one, the benefit of exemption notification which is available only in the case of spectacle lenses, i.e., that is finished spectacle lenses, would not be available to the appellant herein. This approach of the authorities below was clearly erroneous. It is the power lenses which were imported by the appellant herein. They were treated as semi-finished only because of the reason that while fitting these lenses for a particular customer, i.e., before customizing according to the prescription, they were to be finished lenses. For the aforesaid reason, the goods could not be treated as “semi-finished” and it could be appropriately described as “to be finished spectacle lenses”. Therefore, such lenses would clearly be treated as spectacle lenses and were [xx] entitled to exemption notification which view was taken by even the department itself for earlier years.*

9. We set-aside the impugned judgment of the CESTAT [and hold] that the goods in question were entitled to exemption as per Notification No. 6/2006-C.E., dated 1st March, 2006. The appeals are allowed with consequential benefits.”

5. Since the issue is squarely covered in favour of the appellants by the judgments of the apex court in the appellant’s own case and by following the ratio of the decision of the apex court, we allow the appeals of the appellant with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **03/08/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S. GARG
JUDICIAL MEMBER

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