IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNA
BANGALORE

REGIONAL BENCH – COURT NO.I

Excise Appeal No. 20388 of 2017

(Arising out of common Order-in-Original No. CAL-EXCUS-000-COM-013, 014 and 015-16-17 dated 29.12.2016 passed by the Commissioner of Central Excise, Customs and Service Tax, Calicut Commissionerate, C.R. Building, Mananchira, Calicut – 673 001)

M/s. SAC Industry **: Appellant**
XI/256, Charalapathy, Moolathara,
Meenakshipuram, Palakkad – 698 533

VERSUS

The Commissioner of Central Excise, Customs and Service Tax **: Respondent**
Calicut Commissionerate
C.R. Building, Mananchira, Calicut, Kerala – 673 001

WITH

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APPEARANCE:

Shri B.V. Kumar, Advocate for the Appellant

Smt. D.S. Sangeetha, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOS. 20019-20021/ 2022

DATE OF HEARING:06.01.2022

DATE OF DECISION: 01.02.2022

Order :Per Hon'ble Shri P. Dinesha

These appeals question the denial of benefit of Notification No. 88/88-C.E. dated 01.03.1988 and since a common issue is involved in all these appeals and also since the same are filed against the common impugned Order-in-Original No. CAL-EXCUS-000-COM-013-16-17, CAL-EXCUS-000-COM-014-16-17 and CAL-EXCUS-000-COM-015-16-17 dated 29.12.2016, they are heard together and are disposed of by this common order.

2. The appellant is a manufacturer of "handmade laundry soap without the aid of power" falling under CSH 3401 1942 of the Central Excise Tariff Act, 1985, is registered as a Women's Society under the Tamil Nadu Societies Registration Act, 1975; all the members of the society are women and the employees / labourers are also women from the nearby villages.

3. Three Show Cause Noticesnamely :

(i) SCN No. 112/2015-C.E. dated 02.07.2015

(ii) SCN No. 55/2015-C.E. dated 04.08.2015

(iii) SCN No. 17/2016-C.E. dated 02.04.2016 were issued, *inter alia*, alleging that the Assistant Commissioner of Central Excise and Customs, Palakkad, had directed the Preventive Unit of the same division to conduct necessary enquiries and that, on verification of the documents submitted by the appellant vis-à-vis the appellant's exemption claim, it is alleged to have been noticed that the registration certificate under the Tamil Nadu Societies Registration Act did not contain the name of M/s. SAC Industry therein; that PAN under the Income Tax Act was in the name of the appellant; that the name of the Women's Society did not figure in any of the statutory documents, etc., apart from various other allegations and thereby proposing to deny the benefit of Notification No. 88/88-C.E. ibid. by concluding that the society was fake. The appellant thereafter filed a detailed reply in response to the above Show Cause Notices and also by enclosing registered documents, PAN, registration with the Commercial Tax Officer, Chittur, Palakkad District, Loan Sanction Order dated 10.07.2008 given by Indian Overseas Bank, Statutory Audit Reports of the society in terms of Section 44AB of the Income Tax Act, 1961, a certificate dated 07.07.2015 issued by the Village Officer of Moolathara Village to the effect that the village where the appellant-society is located comes under Perumatty Panchayat, Chittur Taluk, Palakkad District, which is in the rural area in the Revenue records, and a certificate issued by the Tehasildar, Chittur Taluk, Palakkad District dated 17.11.2015 to the effect that the appellant's unit is functioning in Re-survey No. 348/2, Block-45 at Moolathara Village, Chittur Taluk, Palakkad District. The appellant also placed reliance on various decisions, but however, the Commissioner vide impugned orders has denied the benefit of the Notification No. 88/88-C.E., thereby confirming the demand of duty along with interest and penalty under Section 11AC of the Central Excise Act, 1944. Seriously aggrieved, the appellant has filed the present appeals.

4. Heard Shri B.V. Kumar, Learned Advocate for the appellant and Smt. D.S. Sangeetha, Learned Additional Commissioner (Authorized Representative) for the Revenue.

5.1 The Learned Advocate for the appellant would submit that the appellant is a registered society having its permanent address at Pollachi, which is also noted by the Commercial Tax Officer,Chittur, Palakkad District in his Inspection Report. He would also submit that the appellant has been submitting complete information, as required under Rule 9 of the Central Excise Rules, 2002 read with Notification No. 36/2001-C.E.(N.T.) dated 26.06.2001, as amended, wherein they have clearly mentioned that *"SAC Industry is a unit of 'MahalirSuyaVelaivaipuAbhiviruthiSangam', a Women's Society, and is located in a 'rural area' as defined in Notification. No. 88/88-C.E. dated 01.03.1988, as amended from time to time"* and there was no suppression of facts on the part of the Appellants. He would also submit, by referring to the Overdraft / Loan Sanction Order issued by Indian Overseas Bank, Pollachi for Rs.150 Lakhs, that SAC Industry was shown as "owned by *'MahalirSuyaVelaivaipuAbhiviruthiSangam' ".* He would also submit that even in the declarations filed in terms of Rule 9 of the Central Excise Rules, 2002, they have clearly mentioned SAC Industry as *"owned by 'MahalirSuyaVelaivaipuAbhiviruthiSangam' having Registration Certificate No. 34/2001 issued under the Tamil Nadu Societies Registration Act, 1975"* and that they were running a handmade washing soaps manufacturing unit (laundry soap production without aid of power), located at XI/256, Charalapathy, Moolathara, Meenakshipuram, Palakkad, Kerala – 678 533; that those declarations were duly acknowledged by the Inspector of Central Excise / Range Superintendent, which effectively points to the fact that there was no suppression whatsoever involved.

5.2 He would also refer to the appellant's Audit Report user the Income Tax Act wherein also it is clearly mentioned that *"SAC Industry is a unit of 'MahalirSuyaVelaivaipuAbhiviruthiSangam', having its Head Office at 29, Theppakulam Street, Pollachi – 642 001 and having its Branch at XI/256, Charalapathy, Moolathara, Meenakshipuram, Palakkad, Kerala – 678 533",* which is also duly reflected in their Income Tax returns from the Assessment Year 2010-11 onwards.

5.3 He would also refer to the certificate dated 10.10.2006 issued by the Commercial Tax Officer, Pollachi (West) certifying that SAC Industry is owned by 'MahalirSuyaVelaivaipuAbhiviruthiSangam',Pollachi and are registered as a dealer in the office of the Deputy Commercial Tax Officer, Pollachi (West), Assessment Circle.

5.4 He would also refer to the Service Tax Registration Certificate No. AACAS3816RSD002 dated 01.03.2011 wherein, in the column relating to 'Constitution of the Applicant', it is clearly mentioned that the status of the appellant is a 'society'.

5.5 He would also refer to the photocopy of the Certificate dated 07.07.2015 given by the Village Officer, Moolathara Village, Chittur Taluk, certifying that the area Charalapathy in village Moolathara, Perumatty Panchayat, Chittur Taluk, Palakkad District, belongs to the Rural Area in the Revenue record; and would also draw our attention to the photocopy of the Certificate issued by the Tehasildar, Chittur Taluk, Palakkad – 678 101 dated 17.11.2015 evidencing that the unit / factory viz., SAC Industry, for manufacturing handmade washing soap, is functioning in in Re-survey No. 348/2, Block-45 at Moolathara Village, Chittur Taluk, Palakkad District of Kerala State.

5.6 Referring to the above, Learned Advocate for the appellant would submit that there are enough and more evidences to prove that the appellant is a unit of / owned by 'MahalirSuyaVelaivaipuAbhiviruthiSangam' and that the appellant is only a second unit started by the appellant, which was basically an expansion of their activities in other rural areas as well.

5.7 In a nutshell, the contentions of the Learned Advocate for the appellant,*inter alia,* are that the appellant manufactures "handmade laundry soap without the aid of power"; that the appellant is registered as a Women's Society under the Tamil Nadu Societies Registration Act, 1975 and that the appellant-society was registered in the year 2006; that thereafter, they decided to start a second unit in Charalapathy, Moolathara, Meenakshipuram, Palakkad in 2010 as part of their activities in rural areas, mainly to provide employment for rural women; that since their first unit was already registered, they did not take a fresh registration for their second unit; that the Commissioner misdirected himself by assuming that the second unit was a new setup; that the appellant being a Women's Society and having a setup in the rural area, has satisfied all the requirements of the Notification in question and therefore, the denial of the benefit is wholly arbitrary and misconceived.

6. *Per contra*, the Learned Departmental Representative would simply rely on the findings in the impugned order.

7. We have heard the rival contentions and gone through the documents placed on record.

8.1 The tenor of the Show Cause Notices, *inter alia*, that the name of the Women's Society does not figure in any of the statutory documents, does not figure in the website of Sabari Soaps, that the labels and packing do not contain the name of the Women's Society, etc., are the reasons for denying the benefit of the Notification No. 88/88-C.E. We have seen the primary evidences / documents like registration certificate under the Tamil

Nadu Societies Registration Act, 1975, certificate issued by the Tehasildar, etc., and by these alone we are satisfied that the appellant is a society, and is located in the rural area. To be specific, the appellant is registered as a cooperative society in the rural area, which is manufacturing one of the goods which is described in the table given in the Notification ibid., namely, "laundry and carbolic soaps" and thereby, the appellant satisfies the primary condition.

8.2 The Women's Society comes under the inclusive clause "including women's societies" and by this, we find that the appellant has even satisfied the inclusive part of the definition as well.By these, we can safely conclude that the denial of benefit of exemption is patently wrong and unsustainable.

9. We are surprised to note that when the appellant is focussing on achieving its objective by keeping a low profile, the allegations in the Show Cause Notices, which tantamount to publicity, is not the requirement of the Notification and to deny a benefit consequently, is arbitrary and unsustainable. When primary documents issued by Government agencies like the certificate of registration under the Tamil Nadu Societies Registration Act, certificate of the Village Officer and that of the Tehasildar speak for themselves, we do not need more than these basic documents to establish the status or location of the appellant. Unfortunately, only grave allegations are made, but no supporting documentary evidence is relied upon by the authority who issued the Show Cause Notice. From the impugned order also, we do not see any contrary findings based on any supporting material piece of evidence, to demolish the contentions of the appellant, which are duly supported by concrete evidences.

10. Insofar as the decisions/case-law relied upon by the Learned Advocate for the appellant, we see that they are very much in support of the appellant's claim as well.

11. Accordingly, we are of the clear view that the denial of benefit of Notification No. 88/88-C.E. dated 01.03.1988 has been made on whims and fancies and without there being the support of any documentary evidences and hence, the same cannot be sustained.

12. In view of the above, the impugned order is set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **01.02.2022**)

Sd/-	Sd/-
(P. ANJANI KUMAR)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd