CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 55106 of 2013

[Arising out of Order-in-Appeal No. 147/CE/APPL/CHD-I/2011 dated 27.08.2012 passed by the Commissioner (Appeals), Chandigarh]

M/s A G V Fenestration Pvt Ltd **......Appellant**
(Village-Mauza Rampur, Jattan, Kala Amb, Sirmour, HP)

VERSUS

CCE-Chandigarh-I **......Respondent**
Central Revenue Building Sector 17-C, Chandigarh)

APPEARANCE:

Present for the Appellant: Shri Vikrant Kackaria, Advocate

Present for the Respondent: Shri Aneesh Dewan, Authorized Representative

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60706 /2023

DATE OF HEARING:30.11.2023
DATE OF DECISION: 11.12.2023

PER S. S. GARG

The present appeal is directed against the impugned order dated 27.08.2012 whereby the Commissioner (Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the case are that the appellant is engaged in the manufacture of Doors and Windows of Aluminium, Wood PVC, Structural Glazing Systems, Curtains Wall Systems etc. falling under

Chapter 39,44, 70 & 76 of the Central Excise Tariff. As per the appellant, they set up this new unit in the state of Himachal Pradesh and is eligible for exemption under Notification No. 50/2003-CE dated 10.06.2003 as amended from time to time. The appellant started initial production on 20.06.2009 and sent the declaration to avail the exemption by Under Postal Certificate (UPC) on 18.06.2009 and the date of exercise of the option under this notification was mentioned as 20.06.2009 in the declaration filed by them. The appellant filed subsequent declaration because they had sought opinion from their consultant who had advised that this declaration needs to be filed for every financial year because notification provides for availing of exemption for each year and hence fresh declaration was again filed on 22.03.2010, thereafter, a show cause notice dated 22.07.2010 was issued to the appellant proposing to disallow the benefit of exemption under the said exemption notification and after following the due process the original authority denied the exemption on the ground that the appellant had filed the declaration for availing the exemption on 22.03.2010 whereas exemption was claimed with effect from 20.06.2009. Aggrieved by the said order, the appellant filed the appeal before the Commissioner who rejected the appeal of the appellant. Hence, the present appeal.

3. Heard both the parties and perused the record.

4. Ld. Counsel appearing for the appellant submits that the impugned order is not sustainable in the law as the same has been passed without properly appreciating the facts of the case and the

law. He further submits that they had sent the declaration through Under Postal Certificate (UPC) on 18.06.2009 copy of which was enclosed with the reply to the show cause notice but the cognizance of the same has not been taken on the grounds that the said declaration could not have been sent through UPC because it was a very important declaration. He further submits that the authorities below mentioned that the appellant had again filed declaration on 22.03.2009 physically and hence it is to be deemed that the earlier declaration was not filed.

5. He further submitted that though the appellant filed the subsequent declaration also under the impression that declaration is required to be filed every year. He further submitted that there is no finding in the order to the fact that the declaration sent through Under Postal Certificate (UPC) was not genuine receipt. He further submitted that he had categorically mentioned vide letter dated 25.08.2012 to the Commissioner of Central Excise that if there is any doubt in the mind of the department regarding the genuineness of the declaration then the same can be verified from the relevant post office. The complete address of the post office along with receipt was also supplied to the officer but the department choose not to get the same verified for the reasons best known to them. He further submits that when the appellant has already filed the declaration then there is no reason to doubt the same and disallowed the benefit of the exemption to the appellant.

6. He further submitted that whether the declaration could be filed through Under Postal Certificate (UPC) had come up before the Hon'ble Tribunal and the Hon'ble Tribunal in the case of ***KEI Indus Ltd. Vs. Commissioner of Central Excise, Jaipur- 2008 (223) E.L.T. 249 (Tri. Del.)*** has been held that when the genuineness of the same is not disputed then the same has to be considered as a valid declaration. Similar view has been taken by the Hon'ble Tribunal in the case of ***Decent Aluminum Indus Vs. Commissioner of Central Excise***, Allahabad reported as ***2007 (2002) E.L.T. 325 (Tri. Del.)*** & ***Commissioner of Customs Vs. Ashok Kumar*** reported as ***2016 (333) E.L.T. 72 (Del.)***

7. Ld. Counsel further submitted that it is nowhere disputed in the impugned order that the appellant was not eligible for exemption and the appellant in fact had been given the benefit of exemption after 23.03.2010 i.e. after the date of physical receipt of the new declaration for the financial year 2010-11. He further submitted that the issue as to whether the benefit of exemption can be denied had come up before the Hon'ble Tribunal in the case of ***Standard Ispat Ltd. Vs. Commissioner of Central Excise, Raipur-I reported as 2005 (192) E.L.T. 264 (Tri.-Kolkata)*** and ***Grasim industries Ltd. Vs. Commissioner of Central Excise, Indore reported as 2004 (164) E.L.T. 348 (Tri.-Delhi).***

8. He further submitted that even though the said decisions are in the context of modvat credit but the analogy is to the same and the exemption cannot be denied for mere late filing of declaration. He

further submitted that similar issues had come up before the Hon'ble Tribunal in the context of the identical notification for unit located at Himachal Pradesh and it has been held that the benefit of the exemption cannot be denied for procedural lapse if any. He cited the following decisions :

(i) Controls and Switchgears Company Ltd. Versus Commissioner of Central Excise Meerut and Vice Versus in Appeal No.E/2043/2007-EX(DB) & E/2349/2007-EX(DB) decided on 13.04.2017 reported as 2017-TIOL-1960-CESTAT-DEL

(ii) Vasantham Enterprises Versus Commissioner of Central Excise, Chandigarh reported as 2015 (37) S.T.R. 1007 (Tri. Del.) which has been upheld by the Supreme Court reported as Commissioner v. Vasantham Enterprises 2018 (13) G.S.T.L. J33 (S.C.)

(iii) Usha Infrasystems Versus Commissioner of Central Excise, Chandigarh-II Versus reported as 2019 (369) E.L.T. 1258 (Tri. Chan.)

(iv) Indica Industries Pvt. Ltd. Versus Commissioner of C. Ex. & S.T., Dehradun reported as 2017 (257) E.L.T. 961 (Tri. Del) and upheld by the Supreme Court in the Commissioner Versus Indica Industries Pvt. Ltd. - 2018 (360) E.L.T. A124 (S.C.)

9. He further submitted that similar issue as to whether the declaration under Notification No. 09/2003-CE was mandatory had come up before the Tribunal in the case of ***Forging Machinery Manufacturing Co. Vs. CCE & ST Jalandhar*** reported as ***2018***

(364) E.L.T. 208 (Tri.) wherein it was held that the exemption cannot be denied for non-filing of declaration.

10. On the other hand, Ld. AR for the Revenue reiterated the findings of the impugned order and submitted that in the present case the declaration if any, allegedly sent on 18.06.2009 sent through UPC was not received by the department and therefore for the period from 20.06.2009 to 21.03.2010 the appellant was not entitled to the exemption under notification No. 50/2003-CE dated 10.06.2003. He further submitted that the onus is on the appellant to prove the delivery of the said declaration to the department by cogent evidence which in this case he has failed. He relied upon the Larger Bench decision in the case of ***Ms. Margra Industries Ltd. Vs. CCe reported as 2006 (202) ELT 244 (Tri.-LB).*** He further submitted that the adjudicating authority has given clear findings that it has not been received in their office and therefore, in the absence of proof of actual delivery, the contentions of the appellants are liable to be rejected.

11. He further submitted that there is no necessity to file the declaration every year as per the notification. He further submitted that as regards the retrospective applicability of the exemption notification, it has been held by the Hon'ble Tribunal in the case of ***Mancare International P. Ltd. Vs. CCE, reported in 2018 (363) ELT 432 (Tri. Del)*** wherein it was held that filing of declaration under Notification No. 50/2003-CE is mandatory and the benefit of Notification will be given only from the date of filing of declaration as

prescribed under the said notification. He also relied upon the decision in the case of ***Maha Lakshmi Packages Vs. CCE, Chandigarh-I 2015 (329) ELT 823 (Tri-Del.)***

12. After considering the submissions of both the parties and perusal of the material on record, we find that the only issue in the present appeal relates to denial of exemption under Notification No. 50/2003-CE dated 10.06.2003 for the period of 20.06.2009 to 21.03.2010. We find that the department has denied the exemption to the appellant only on the ground that he has not filed the declaration for availing the exemption prior to 20.06.2009 whereas the case of the appellant is that they had sent the declaration through UPC on 18.06.2009 and copy of the same was sent along with reply to the show cause notice but the department did not take cognizance of the same.

13. We also find that the appellant vide his letter dated 25.08.2012 informed the Commissioner of Central Excise, Chandigarh that if the department has got any doubt regarding the genuineness of the declaration then the same can be verified from the relevant post office and the complete address of the post office was also supplied to the officer. But the department did not make any effort to verify the same and simply ignored the request of the appellant and has denied the exemption for the relevant period only on the ground of non receipt of declaration. Further, we find that subsequently, the appellant filed declaration on 23.03.2010 under the belief that every year declaration is required to be filed. This issue of non filing/late

filing of declaration to avail exemption under Notification No. 50/2003-CE dated 10.06.2003 has come up before this Tribunal in the case of ***Controls and Switchgears company Ltd. Vs. Commissioner of Central excise Meerut*** and Vice-versa-***2017-TIOL-1960-CESTAT-Del***. Wherein also the exemption was denied to the assessee on the ground that assessee did not file the option for claiming benefit of exemption notification. It was held by the Tribunal that intimation to the department about the option for claiming benefit of exemption appears to be only a procedural requirement, and a liberal attitude, therefore as to be taken in this regard when the assessee otherwise is entitled to the benefit of exemption notification with effect from the date when the department was informed by the assessee on their claim of benefit of the notification. The Tribunal in this case relied upon the decision of the Hon'ble Apex Court in the case of ***Commissioner of C.Ex. New Delhi Vs. Hari Chand Shri Gopal 2010 (260) E.L.T. 3 (S.C.)= 2010-TIOL-95-SC-CX-CB*** wherein it has been held as under:

"has held that though exemption provisions have to be complied with strictly some latitude may be shown in case of sorme requirements which are directory in nature, the non-compliance of such requirements would not affect the substance of notification granting exemption. In the present case intimation to the department about the option for claiming benefit of the exemption undertaken appears only a procedural requirement. The liberal attitude, therefore, has to be taken in this regard, when the assessee otherwise is entitled to the benefit of exemption notification no. 50/2003

(supra). The Hon'ble Supreme Court in the above case inter alia observes as under:

"Exemption Clause-Strict Construction

22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that emption or concession. A provision providing for an exemption, concession or exception, as the case may be, has be construed strictly with certain exceptions depending upon the settings on which the provision has to be placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In Novapan Indian Ltd (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax flability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statue, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, ie, by the plain terms of the exemption.

23. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction *between provisions of statue which are of substantive character and were built in with certain specific objection[ns of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. in Tata Iron and Steel Co. Ltd, (supra), this Court held that the principles as regard construction of an exception notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature."*

6. Following the observations of Hon'ble Supreme Court (supra), the assessee Controls & Switchgears Co. Ltd is entitled to the benefit ofexemption notification no 50/2003 (supra) for the relevant period. Consequently, impugned onder is set aside and the assessee's appeal (No E/2043/2007) is allowed with consequential benefit, if any. The Revenue's cases appeal (No. E-2349/2007) also stands disposed-of accordingly.

14. Further, in the case of ***Vasantham Enterprises Vs. Commissioenr of C. Ex. Chandigarh reported 2015 (37) S.T.R. 1007 (Tri.-Del.)*** it was held by the Tribunal that it is a settled law that though exemption notification generally should be strictly interpreted but beneficial exemption for encouragement or promotion of certain activities should be liberally interpreted once eligibility criteria is satisfied. We find that in the present case the appellant is entitled to area based exemption being located in specified area, and incomplete declaration does not totally debar him from eligibility to

above exemption otherwise it would defeat the object of area based exemption. This judgment of the Tribunal was upheld by the Hon'ble Apex Court as reported in ***2018 (13) G.S.T.L. J33 (S.C.).*** Further in the case of ***Indica Industries Pvt ltd*** the Tribunal has held as under in para 5 & 6:

"5. We have heard both the sides and perused the appeal records. We note that the original authority recorded (Para 6 12 of impugned order) that it is not the case of the department that the party was located in a non-notified khasra or manufacturing product in the negative list or that they have not commenced the production before the cut of date of 31-3-2010 These are admitted facts. The only reason for denial of the exemption to the appellant is that they have not filed the declaration as stipulated in the notification for avalling such exemption. The original uthority held that though Notification No. 50/2003.C.E. did not contain such condition initially the same was inserted vide Notification No. 78/2003-C. E, dated 5-11-2003. The original authority held that the condition of filing declaration with details is mandatory and in the absence of that the exemption shall not be available.

6. We have perused the condition as reproduced above. The details as required to be filed in the option were all available in the letter dated 15-3-2010 seen in the appeal records. The said letter was in connection with registration of the Unit No. III under Rule 9 of Central Excise Rules, 2002. The registration as sought for has been given by the department on 19-3-2010. However, we note that the appellant indicated in the said Notification No 76/2008-C.E., dated 24-3-2008 with reference to already existing unit (Unit-II) apparently no reference to Exemption No. 50/2003 was made when new registration was sought for Unit No. III. However, the monthly

ERI return which is a statutory return giving various details of excisable goods manufactured and cleared and the exemption availed was filed for Unit No. III for the month of March, 2010 on 10-4-2010. The said return um clearly indicated Notification No. 49/2003 and 50/2003 along with details like description of goods, quantity manufactured etc. In these factual matrix, we find that the department has been intimated about the existence of the unit, nature of products manufactured and the exemption claimed under Notification No. 50/2003-C E. We find that the same can be considered as adequate compliance of the condition of the notification. We again note that there is no other material ground on which the exemption is sought to be denied. In view of these factual positions, we find no justification in denial of exemption and accordingly set aside the impugned order and allow the appeal".

This judgment of the Tribunal has been upheld and the appeal of the Revenue was dismissed as reported in ***2018 (360) E.L.T. A124 (S.C.).***

15. Further, we find that the decisions relied upon by the Revenue is not specifically covering the issue whereas the decisions relied upon by the appellant cited (Supra) are dealing with the late filing/non filing of declaration under Notification No. 50/2003-CE dated 10.06.2003.

16. Hence, by following the ratio of the decisions cited (Supra) we are of the considered opinion that the denial of benefit of notification

50/2003-CE dated 10.06.2003 for the period from 20.06.2009 to 21.03.2010 is not sustainable in law and therefore we set as aside the denial of exemption under the said notification by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 11.12.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash