

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

DIVISION BENCH

Date of hearing/decision: 05.12.2018

APPEAL NO. E/1936/2009-Ex[DB]

[Arising out of Order-in-Original No. 350/CE/Apl./Jal(JK)/2009 dated 31/03/2009 passed by the Commissioner(Appeals) of Cen. Ex., Chandigarh-II]

CCE Jammu

Appellant

Vs.

M/s Shankar Timber Products

Respondent

Appeal No. E/1971/2009-Ex(DB)

M/s Shankar Timber Products

Appellant

Vs.

CCE, Jammu

Respondent

Appearance:

Shri Tarun Kumar, AR

For the appellant / respondent

Shri S. K. Mittal, Advocate

For the respondent/ appellant

CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

FINAL ORDER NO.

Per Bijay Kumar :

1. Both these appeals emerges out of common Order-in-Appeal passed by the Ld. Commissioner(Appeals), CCE Chandigarh, vide which he has partially set aside the order of the Ld. Adjudicating Authority and thus partially given relief to the appellant assessee.
2. Revenue/Respondent is in appeal against the portion of the order which has been held against the Department while the assessee is in appeal against the portion order of rejection of refund filed by them, on account of time barred.

3. The issue involved in this case is that the appellant-assessee are engaged in the manufacture of supply of plywood and boards, in the State of Jammu & Kashmir and are availing the benefit of Notification No. 56/2002 dated 14/11/2002 (as amended) . The appellant assessee filed the refund claim for Rs. 36,447/-, Rs. 53,187/-, Rs. 45,865/-, Rs. 1,16,889/- and Rs. 86,650/- on account of duty paid during the month of February and March, 2005, and January, February, March, 2006 under Notification 56/2002/CE dated 14/11/2002. The Adjudicating Authority rejected the refund claim on the ground that the effective rate to their product was 8 per cent as per the Notification No. 03/205/CE dated 24/02/2005 and 04/02/2006/CE dated 01/03/2006 and not 16 per cent at which the appellant paid the duty. The appellants were not required to pay the duty through PLA, as the duty payable at the rate of 8 per cent could have been paid through Cenvat Credit available with them on the relevant date. Further, the Adjudicating Authority has observed that the refund claim for the month of February, 2005 to March, 2005 and January, February and March 2006, have been has been filed after the period of one year, time thereby violating the provisions of Notification No above which provided the file the claim by the 7th date of next month. The Adjudicating Authority has observed that the exemption benefit was available to the appellant from the date of filing of expansion date i.e. 11/10/2006 and not prior to that. That is from the base employment 'limit' which provides for employment increases by 25% from the basis limit which has been certified as 01/08/2004 by the competent authority in the Notification No. 56/2002. The Commissioner (Appeal) has held that the appellant has rightly paid the duty at the rate of 16 per cent and the effective

rate of 8 per cent of duty was without any basis and he set aside the said portion of the order. Further Ld. Commissioner(Appeal) has held that there expansion case in terms of Notification No. 56/2002, which was denied by the Adjudicating Authority is not correct, and accordingly he modified the order restricting the benefit from 11/12/2006. Regarding the refund Ld. Commissioner(Appeal) has held that the statement was required to be provided by the appellant by 7th day of next month which has not been done in this case which is statutory condition of the Notification relying on the decision of *Rukmani Pakkwell Traders*, [2004(165) ELT 981(SC)] and regarding the reliance of the appellant on the decision of *CCE Shilong VS. Vinay Cement Ltd.* [2002 (147) ELT 724] only. Ld. Commissioner (Appeal) held that the decision of said benefit is not applicable in view of word **Shall** appearing at the provision of 2(a) of the Notification. Accordingly, as the interpretation of the Notification is to be applied strictly as mentioned therein, and have any relaxation to the conditions appended to the Notification No. 56/2002 would be contrary to the interpretation of exemption Notification and against the legislative intent. As the procedure laid down in the Notification provided special mechanism to give effect to the exemption granted therein, and hence has been followed by the Ld. Adjudicating Authority and the case filed on the court of time limitation under Notification. Thus the rejection of refund claim of the appellant by the Adjudicating Authority was upheld.

4. The revenue appeal is limited to extension of benefit of Notification pertaining to the expansion with effect from the date prior to the date filing

i.e. 11/12/2006. On the other hand, the appellant assessee is contesting the impugned order for rejecting their refund holding the refund to be time barred.

5. Against this background, we have heard Ld. AR and Ld. Advocate and perused the appeal records.

6. In respect of the issue regarding the application of conditionality of expansion prior to date of filing is concerned, the same is covered by the decision of this very Tribunal in their own case vide Final order No. 790/2011-EX dated 17/08/2011, & Stay Order No, 847/2011-EX wherein it is held as under;

“In terms of para 3 of the Notification No. 56/2002-CE, the exemption under this notification is also applicable to the existing units, which have undertaken substantial expansion by the way of increase in installed capacity by not less than 25% substantial expansion, resulting in not less than 25 % increases in regular employment on or after 14/06/02. In this case it is not disputed that the respondent satisfy this condition much prior to December, 2006. The duty in respect of clearance made during a particular month is required to be paid in the next month. As per para 1(a) of the notification in the cases where all the goods manufactured by a manufacturer in a specific area are eligible for exemption under this condition, the exemption contained in this notification shall be available subject to the condition that the manufacture first utilized the whole of the Cenvat Credit available to him on the last day of the month under consideration for payment of duty cleared during such month and pays only the balance amount in

cash. In this case all the goods manufactured by the respondent are eligible for this exemption and, therefore, for payment of duty for December, 2006, and respondent was to utilised the Cenvat credit to the extent available as on the end of December 2006 and pay only the balance amount in cash, which would be refundable to him. Para 2 of the notification provides for submission of statement of the duty paid through PLA to the Jurisdictional Assistant Commissioner, who after verification would sanction the refund. When the duty in respect of clearance made during whole of December 2006 was payable only in the next month and during December 2006, the respondent was eligible for benefit of Notification No. 56/2002-CE, in our view the benefit of this exemption cannot be restricted only to the clearance made from 11/12/06. Therefore, there is no infirmity in the impugned order. The revenue's appeal is dismissed."

Following the said decision, we find that the filing of the statements is procedural nature and does not come in way of granting of the refund to the appellant. Reliance is also placed in this regard to the decision of ***Commissioner of Central Excise, Shillong vs. K K Beverages***, 2002 following the Supreme Court judgment, wherein it is held that the benefit under Notification No. 32/99, not to be denied only on the late filing of the declaration in absence of the other allegations much less any finding that the respondent has not fulfilled the substantive condition of the Notification.

7. Also regarding the second issue pertaining to Departmental appeal, we find that the contention of the Department with exemption Notification cannot be

granted to the respondent assessee for the period prior to 11/12/2006, has no basis on the law. It is seen from para 2(a) and 2(A)(d) of the Notification. Under the Notification it is not seen that it provides that in order to avail the Notification benefit the appellant will be disentitled to avail the benefit for the period prior to filing of the appeal. This issue has been earlier decided by the Order-in-Original No. 2008/CE/APP/JAL/2007 dated 27/07/2007 passed by the Commissioner(Appeal). In that appeal this issue has been decided against the Revenue and it is contended that Revenue has not filed any appeal against the order. Similar conclusion has been drawn by the Ld. Commissioner(Appeal) that in the said order which we reproduced as under;

On perusal of the para 3(b) (2) of the Notification No. 56/2002-CE dated 14.11.2002 as amended I find that it lays down that "the manufacture shall produce a certificate from the General Manager of the concerned District Industries Centre to the jurisdictional Asstt./Deputy Commissioner of Central Excise to the effect that the unit has increased such additional regular employment." The appellants have produced the requisite certificate which is on record and also discussed in the Order-in-Original. However, the adjudicating authority refused to accept the correctness of the certificate, on the ground that the certificate has not given any specific report which categorically certifies the maximum no. of employees employed by the unit during the last five years and the new investment has created additional regular employment not less than 25% over and above base employment as per the provisions of para 3(b)(iii) of the Notification No. 56/2002, under which the appellants claimed expansion. From the perusal of the certificate I find that the contents and the words in the certificates suffice the requirement of the notification. Further, the letter dated 13/06/2007 of GM, DIC Kathua has mentioned specifically and categorically the increase in regular employees from 11 to 15,

annulling the objection of the Adjudicating Authority in accepting the earlier certificate dated 13/10/2005 of GM, DIC, Kathua.

8. We find no reason to disagree with the impugned finding of the Ld. Commissioner (Appeal).
9. In view of above, we hold that the appeal filed by the assessee-appellant is allowed and that of the Revenue is dismissed.

(Operative part pronounced in court)

(Ashok Jindal)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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