CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

Appeal No. E/1125,1220-1222/2007, E/24/2009-DB

Date of Hearing/ Decision : 20.03.2018

[Arising out of Order-in-Appeal No. OIA-29-CE-APPL-JAL-2007 dated 30.01.2007, OIA-26-28-CE-APPL-JAL-07 dated 29.01.2007, even number dated 31.01.2007 and OIA- 705/CE/APPL/JAL/2008 dated 03.11.2008 passed by the Commissioner (Appeals) Central Excise & ST, Chandigarh]

M/s. Kohinoor Rubber Mills : **Appellant**
M/s. Kohinoor India Limited

vs.

Commissioner of Central Excise & ST, Chandigarh : **Respondent**

Appearance:

Shri Sudhir Malhotra, Advocate for the Appellant(s)
Shri Tarun Kumar, A.R. for the Respondent(s)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Final Order No. 62202-62206 / 2018

Per : Ashok Jindal

The appellants have filed these appeals against the impugned orders passed by ld. Commissioner (Appeals), for the period November 2003 to April 2004, demanding duty and imposing penalties in respect of inputs namely carbon black procured without payment of duty, under Notification No. 43/2001-CE (NT) of procedural and technical infirmities.

2. The facts of the case are that, the appellant are engaged in the manufacture of Bi-cycle tyres/Tubes, Auto Tyres/ Tubes and Rubber Sheets etc. The goods manufactured by the appellant were exported as well as cleared for home consumption. The said final products are exempted from payment of duty. The appellant exported the said goods under advance licenses and procured inputs against advance license after fulfilment of export obligation. They exported goods under white shipping bills. They got invalidated advance licenses from jurisdictional DGFT authorities for procurement of goods indigenously. Appellant submitted application for procurement of carbon black indigenously without payment of duty under Notification No. 43/2001-CE (NT) against the advance license, which were also submitted with the application for which the permission was granted. Later on, it was held that appellant did not comply with the condition of notification therefore, they are not entitled to procure carbon black without payment of duty.

3. In these set of facts, the proceedings were initiated. In certain cases the adjudicating authority dropped the proceedings but in one case, the adjudicating authority demanded duty on carbon black. In all the cases the ld. Commissioner (Appeals) held that, as the appellant has failed to comply with the condition of Notification No. 43/2001-CE (NT), therefore, they are not entitled to procure carbon black without payment of duty. Against those orders, the appellant is before us.

4. The ld. Counsel for the appellant submits that the facts of the case are not in dispute that appellant has exported the said goods under advance license and got invalidated advance license from jurisdictional DGFT authorities. As the appellant has discharged their export obligation, therefore, proceedings against the appellant are not sustainable. It is the submission of the ld. Counsel that appellant has fell in error by mentioning the Notification No. 43/2001-CE (NT) instead of Notification No. 44/2001-CE (NT), otherwise the appellant has complied with the conditions of Notification No. 44/2001-CE (NT), therefore, appellant has rightly procured carbon black without payment of duty. He submitted that there was only procedural lapse and factum of export of goods is not disputed. In that circumstance, benefit of notification cannot be denied merely on the technical error or typographical error.

5. On the other hand, ld. AR dictated the findings of the impugned order.

6. On hearing the parties, we find that the case of the Revenue is that appellants are not entitled to benefit of exemption notification No. 43/2001-CE (NT) for the goods exported through merchant exporters, as the appellant has not followed ARE-2 procedure. We find that Rule 19 of the Central Excise Rules, 2001/2002 under which the Notification No. 43/2001-CE (NT) is issued. The said notification/ Rule does not put bar that the goods cannot be exported through merchant exporters. As per Rule 19 (2) of the said Rules, any material may be removed without payment of duty from the factory of

producer or manufacturer or warehouse or from any other premises for use in the manufacture or processing of goods which are exported, as may be approved by the Commissioner. Therefore, the only condition is that the goods must be exported and it is immaterial that the said goods have been exported directly by the assessee or through the merchant exporters therefore, benefit of notification cannot be denied. We further take note of the fact that although the appellant has mentioned the Notification No. 43/2001-CE (NT) in their application, but they are entitled to the benefit of Notification No. 44/2001-CE (NT), as they exported the goods under simplified procedure without following the ARE-2 procedure, as per CBEC Circular No. 648/39/2002-CX dated 25.07.2002. In that circumstance, Cenvat credit on carbon black procured without payment of duty cannot be denied merely on procedural lapse on the part of the appellant. Same view has been taken by Hon'ble Apex Court in the case of *Collector vs. National Mechanical Works – 1990 (45) ELT A32 (SC)*, wherein it has been observed that:-

> **"**The Appellate Tribunal in its order in question had held that when exemption form duty is subject to the condition of following Chapter X Procedure and the goods are cleared and received with the knowledge of the Department, the non-obtaining of L-6 licence or execution of B-8 bond is merely a procedural lapse and no demand of duty is sustainable on the said technical ground.**"**

Further, in the case of *Collector vs. Friends Enterprises – 1989 (44) ELT A90 (SC)* observed as under:-

> **"**The Appellate Tribunal in its order in question had held that demand of duty not justified on the ground of procedural lapses if goods were otherwise exempt from duty."

We also take note of the fact that this Tribunal in the case of *I.O.C. Limited vs. CCE, Calcutta-II – 2004 (178) ELT 834 (Tri. Kolkata)* has taken the same view.

7. In view of this observation, we do not find any merit in the impugned orders and the same are set-aside. In result, the appeals are allowed with consequential relief, if any.

(Order dictated and pronounced in the court)

Anil G. Shakkarwar
Member (Technical)

Ashok Jindal
Member (Judicial)

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