Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/1052,1057/2009

Sr. No	Case No	Impugned Order Detail's	Date of Impugned Order	Passed By	Appellant	Respondent
1	E/1052/2009-DB	OIA- 32-33/CE/APPL/JAL/2009	05/02/2009	Commissioner of Central Excise-LUDHIANA	FINE INDUSTRIES,	C.C.E. & S.T.-LUDHIANA
2	E/1057/2009-DB	OIA- 32-33/CE/APPL/JAL/2009	05/02/2009	Commissioner of Central Excise-LUDHIANA	C.C.E. & S.T.-LUDHIANA	FINE INDUSTRIES,

Represented by:

For Appellant (s) : Shri Sudhir Mahlotra and Shri Poojan Mahlotra, Advocates and vice versa

For Respondent (s): Shri Harvinder Singh, AR and vice versa

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

Date of Hearing/Decision: 04.12.2018

ORDER No.A/63539-63540 / 2018

Per : Mr. Ashok Jindal

Both sides are in appeal against the impugned order.

2. The facts of the case are that the assessee was engaged in the manufacture of Diesel Engine parts viz. body and body block etc. lubricating pump bearing brand name “Bhalla” since 1981. The assessee also cleared goods without brand name. The assessee availed SSI exemption under Notification No. 175/86 CE, 1/93 CE dated 28.02.93 and 16/97 CE dated 01.04.1997. The brand name “Bhalla” was registered for item lubricating pump in favour of M/s United Foundry & Engg. Works. and the Show Cause Notice was issued to the assessee on 22.03.1999 for the period 1994 till 17.10.1997 by invoking extended period of limitation to deny the SSI exemption availed by the assessee. The matters were
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adjudicated and the proceedings against the assessee were dropped. The said order was challenged before the ld. Commissioner (A) who affirmed the adjudication order. The said order was also challenged before this Tribunal and this Tribunal also dropped the proceedings against the assessee. The said order was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court held that the assessee is not entitled to avail benefit of SSI exemption Notification. But remanded the matter back to this Tribunal on the question of limitation. The Tribunal remanded matter back to the adjudicating authority to decide the issue of limitation. In remand proceeding, the extended period of limitation was invoked. Consequently, the benefit of SSI exemption notification was granted for un-branded goods manufactured by the assessee, but, on branded goods, the benefit was denied. Against the said order, both sides are in appeal.

3. The Ld. Counsel appearing on behalf of the assessee submits that a similar issue came up before this Tribunal in the case of Bhalla Enterprises vs. CCE – Ludhiana vide Final Order No. 61790-61791/2018 dated 14.03.2018 wherein this Tribunal held that the extended period of limitation is not applicable to the facts of this case. Therefore, the appeal filed by the assessee is to be allowed and Revenue's appeal is to be dismissed.

4. On the other hand, the Ld. AR for the Revenue submits that in their declaration they have not declared that they are using the brand name of

third party, therefore, it is clear cut case of suppression and accordingly the extended period of limitation is applicable.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submission made by both sides, we find that till this Tribunal it was held that the assessee is entitled for SSI exemption and no proceedings are warranted against the assessee, but when the matter came up before the Hon'ble Apex Court it was observed that the assessee is not entitled for SSI exemption. In that circumstances, it is an issue of interpretation of the SSI exemption available to the assessee or not? Therefore, we hold that the extended period is not invokable. Accordingly, we hold that no proceedings are warranted against the appellant by invoking extended period of limitation, therefore, the appeal filed by the Assessee is allowed and the appeal filed by the Revenue is dismissed.

(Dictated & pronounced in the Court)

(Bijay Kumar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

G.Y.