

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

**COURT NO. I**  
**APPEAL NO. E/61591/2018**

[Arising out of Order-in-Appeal No. OIA-JNK-EXCUS-APP-139-18-19 dated 21.06.2018 passed by the Commissioner of Central Excise (Appeals), Jammu & Kashmir]

**Date of hearing/decision:** 06.12.2018

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**M/s Modern Insecticides Ltd** : **Appellant(s)**

**VS**

**C.C.E. & S.T.- Jammu & Kashmir** : **Respondent(s)**

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Appearance:

Present for the Appellant(s): Shri Sudhir Malhotra (Advocate)

Present for the Respondent(s): Shri Tarun Kumar (AR)

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**Hon'ble Mr. Bijay Kumar, Member (Technical)**

**FINAL ORDER NO.**

**63638/2018**

**Per : Ashok Jindal**

The appellant is in appeal against the impugned order wherein benefit of exemption Notification No. 1/2010-CE dated 06.02.2010 has been denied to the appellant.

2. The brief facts of the case are that the appellant was engaged in manufacture of excisable goods falling under chapter 38 of the first schedule of the Central Excise Tariff Act, 1985. As the appellant is located in the State of Jammu & Kashmir, therefore, the appellant was availing benefit of exemption Notification No. 56/02-CE dated 14.11.2002. The appellant undertook substantial expansion by way of additional investment and labour employment and opted for area based exemption

under Notification No. 1/10-CE dated 06.02.2010 w.e.f. 15.10.2016. Initially, the said exemption was allowed by the adjudicating authority but on appeal before the Ld. Commissioner (Appeal), the Ld. Commissioner (Appeal) denied the exemption to the appellant. Hence, the appellant is before us against the impugned order.

3. The Ld. Counsel for the appellant submits that in terms of para 8 (b) (i) to the Notification No. 1/2010-CE dated 06.02.2010, the exemption is available if the existing industrial unit undertake the substantial expansion by way of increase not less than 25% of the value of fixed capital investment in plant & machinery for the purpose of expansion of capacity or modernization and have commence commercial production on or after the 6<sup>th</sup> day of February, 2010 or made an investment on or after the 6<sup>th</sup> day of February and in such investment is directly attributable to general regular employment of not less than 25% over and above the base employment. it is his contention that the exemption has been denied on the ground that the appellant has not generated additional regular employment of not less than 25% over and above the base employment but he contended that the appellant has invested fixed capital more than 25% in Plan & Machinery for the purpose of expansion of capacity and the said issue has not been examined by the authorities below. In that circumstances, the matter be remanded back to the adjudicating authority for fresh concentration.

4. Heard the Ld. Counsel for the appellant.

5. Considering the fact that in terms para 8 (b) (i) of the notification No. 1/2010-CE dated 06.02.2010, the assessee is entitled to avail the benefit of said notification if substantial expansion has been done. For better appropriation, the relevant part of the notification is extracted here in below:-

8. The exemption contained in this notification shall apply only to the following kind of units, namely:-

(a) New industrial units which commence commercial production on or after the 6<sup>th</sup> day of February, 2010;

(b) Industrial units existing before the 6<sup>th</sup> day of February, 2010; but which have,-

(i) undertaken substantial expansion by way of increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purposes of expansion of capacity or modernization and diversification and have commenced commercial production from such expanded capacity on or after the 6<sup>th</sup> day of February,2010

Or

(ii) made new investment on or after the 6<sup>th</sup> day of February, 2010, and such new investment is directly attributable to the generation of additional regular employment of not less than twenty-five per cent over and above the base employment limit,

**Subject to the conditions that,-**

(1) the unit shall not reduce regular employment after claiming exemption, and once such employment is reduced below one hundred and twenty-five per cent, of the base employment limit, such industrial unit shall be debarred from claiming the exemption contained in this notification in future:

Provided that, the exemption availed by such industrial unit, prior to such reduction, shall not be recoverable from such industrial unit.

(2) the manufacturer shall produce a certificate, from General Manager of the concerned District Industries Centre to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central

Excise, as the case may be to the effect that the unit has created such additional regular employment.

Explanation. – for the purposes of this notification,-

(a) “base employment limit” means maximum number of regular employees employed at any point of time, by the concerned industrial unit, during last five years;

on going through the said provisions we find that the exemption under the said notification is available, if there is an increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purposes of expansion of capacity or modernization and diversification after 06.02.2010 or the investment is attributable to generation of additional regular employment of not less than 25% over and above the base employment limit after 06.02.2010. Admittedly, in the impugned order, the expansion in terms of 8(b)(i) of the Notification has not been examined, in that circumstances, we set aside the impugned order and remand the matter back to the adjudicating authority to consider the request of the appellant for exemption in terms of para 8(b)(i) of the Notification No. 1/10-CE dated 06.02.2010 and pass an appropriate order in terms of law accordingly .

In view of the above, the impugned order is set aside and the matter is remanded back to the adjudicating authority as discussed above. Appeal is disposed of by way of remand.

*(Order dictated and pronounced in the open court)*

**Bijay Kumar**  
**Member (Technical)**

**Ashok Jindal**  
**Member (Judicial)**