Customs, Excise & Service Tax Appellate Tribunal

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

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Appeal No. E/61324/2018

(Arising out of OIA-CHD-EXCUS-001-APP-133-18-19 dated 29.06.2018 passed by the Commissioner (Appeals) of Central Excise-CHANDIGARH-I)

M/s Dux Naturals : Appellant (s)

Vs

CCE, Chandigarh-I : Respondent (s)

Represented by:
For Appellant (s) : Shri P. K. Mittal, Advocate
For Respondent (s): Shri Tarun Kumar, AR

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

Date of Hearing: 06.02.2019

Date of Decision:15.02.2019

ORDER No. A/60128 / 2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order for demanding duty on account of denial of benefit of exemption Notification No. 49-50/2003 dated 10.06.2003.

2. The facts of the case are that the appellant started their business unit in the Year 2006 with intention and purpose to set up a small scale unit in the state of Himachal Pradesh and to avail benefit of concessional exemption Notification No. 49-50/2003 dated 10.06.2003 to manufacture Harbal Cosmetics, Shaving Creams, all Purpose Creams and After Shave Lotions etc. The appellant started their unit w.e.f. 15.11.2006 and completed all the formalities such as registration with Director of Industries, Income Tax Department and Labour Department etc. and
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started clearing their goods without payment of duty and availing exemption benefit under Notification No. 49-50/2003 dated 10.06.2003. Later on, an intelligence was gathered that the appellant is not paying central excise duty on their clearances. An investigation was conducted on 05.10.2011 and it was found that as the appellant has not complied with mandatory undertaking for exemption under Notification No. 49-50/2003 dated 10.06.2003, therefore, they are liable to pay duty on their clearances. Accordingly, a show cause notice was issued to the appellant for the period 01.04.2008 to 17.11.2012 to demand duty alongwith interest and to impose penalties under the Central Excise Act/Rules. The matter was adjudicated, the demand was confirmed by denying the benefit of exemption under Notification No. 49-50/2003 dated 10.06.2003 alongwith interest and penalties were also imposed. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that the sole reason for denial of benefit of notification is that the appellant did not filed mandatory declaration to claim exemption under the said notification. It is his contention that the appellant appointed consultant and gave all documents/papers to him for obtaining necessary permission from the various Government Departments. He might have filed declaration with the Central Excise Department also, but, at present, they were not having any record of the same, as the consultant is not having such record at present. He also submitted that the General Manager, District Industries Centre, Shimla has allowed the registration and a copy of the same was

forwarded to Deputy Commissioner, Central Excise Division, Mukund Nivas, Panthagarh, Shimla on 16.10.2008, if same is taken on record and the exemption is granted from the said date, then no demand is sustainable against the appellant. He further submitted that in reply to the show cause notice, he made a categorical statement that they filed mandatory declaration in time and the same is not available on record but the communication received from General Manager, District Industries Centre, Shimla shall be taken on record and from the said date, they are entitled for exemption in the light of the decision of ***Indica Industries Pvt. Ltd vs. CCE & ST reported in MANU/CE/0581/2016 or 2017 (357) ELT 961 (Tri.-Del.).*** Therefore, he prayed that the exemption from 16.10.2008 be granted and the earlier clearances are covered by the Notification No. 08/2003-CE dated 01.03.2003 as the clearances of the appellant were below SSI Exemption Limit. In these circumstances, he prayed that the impugned order is to be set-aside.

4. On the other hand, the Ld. AR for the Revenue opposed the contention of the Ld. Counsel and submits that it is a fact on record that the appellant is not filed any mandatory declaration in terms of Notification No. 49-50/2003 dated 10.06.2003 and there is no communication was received by the department from the General Manager, District Industries Centre, Shimla. Therefore, they are not entitled to benefit of exemption Notification No. 49-50/2003 dated 10.06.2003.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both sides, the sole issue before me is that whether any mandatory declaration has been filed by the appellant to availing the benefit of Notification No. 49-50/2003 dated 10.06.2003 and whether the communication from General Manager, District Industries Centre, Shimla can be taken and intimation in terms of Notification No. 49-50/2003 dated 10.06.2003 for availing benefit of the said exemption notification or not?

7. Admittedly, the appellant has failed to bring any documents on record to show that they have filed mandatory declaration in terms of the Notification No. 49-50/2003 dated 10.06.2003. In that circumstances, issue No. 1 is answered against the appellant as there is no documentary evidence on record.

8. Further, the communication received from General Manager, District Industries Centre, Shimla has been placed on record dated 16.10.2008 wherein the General Manager, District Industries Centre, Shimla has sent a communication to Deputy Commissioner, Central Excise Division, Mukund Nivas, Panthagarh, Shimla which certified that the appellant has started a unit of Harbal Cosmatic in the state of Himachal Pradesh, this fact has not been denied by the Revenue with any cogent evidence. Therefore, the said communication is to be taken as the date of intimation to the department in term of Notification No. 49-50/2003 dated 10.06.2003.

9. Further, I find that in the case of ***Indica Industries Pvt. Ltd (supra)*** this Tribunal has observed as under:-

> ***"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 area based Exemption No. 50/2003 was made when new registration was sought for Unit No. III. However, the monthly ER-I 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 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."*

As it was in the knowledge of the department that the appellant has installed a unit of Harbal Cosmatic in the state of Himachal Pradesh, through intimation by General Manager, District Industries Centre, Shimla dated 16.10.2008. Therefore, I hold that the appellant is entitled for the exemption of the said notification w.e.f. 16.10.2008. Further, I hold that for the period prior to 16.10.2008, the appellant is entitled for SSI exemption under Notification No. 08/2003-CE dated 01.03.2003. Therefore, no demand is sustainable against the appellant.

10. In view of the above, I set-aside the impugned order and allow the appeal with consequential relief, if any.

(Order pronounced on 15.02.2019)

(Ashok Jindal)
Member (Judicial)

G.Y.