IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal Nos. E/856/2003 and E/1144/2004

(Arising out of Order-in-Appeal No. 190/2003-CE dated 25.7.2003 and Order-in-Appeal No. 27/2004-CE dated 30.1.2004 both passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. M.M. Engineers Pvt. Ltd. Appellant
(Unit I & Unit II)

Vs.

Commissioner of GST & Central Excise
Coimbatore Respondent

Appearance

Shri R. Balagopal, Consultant for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing : **31.10.2018**
Date of Pronouncement: **13.11.2018**

Final Order Nos. **42811-42812 / 2018**

Per Bench

Both these appeals being connected, they were heard together and disposed by this common order.

2. Appellant in Appeal No. E/856/2003 is Unit – II whereas in Appeal No. E/1144/2004 is Unit –I of M/s. M.M. Engineers Pvt. Ltd.

3. Brief facts are that the appellants Unit – I are manufacturers of cranes and parts thereof. They were availing the SSI exemption under Notification No.1/93-CE and clearing goods without payment of duty. During October 1997, the officers visited the premises. On verification of records, it appeared that they had exceeded the SSI exemption limit and were not eligible for SSI exemption for the years 1994 – 95 to 1997 – 98. Show cause notice was issued proposing to demand duty and also for imposing penalties. After due process of law, the original authority confirmed duty demand of Rs.1,04,641/- for Unit – I and Rs.2,68,455/- for Unit – II of the appellants and also imposed penalties. In appeal, Commissioner (Appeals) upheld the demand whereas modified the penalties to a limited extent. Aggrieved, the appellants are now before the Tribunal.

4.1 On behalf of the appellant, ld. consultant Shri R. Balagopal appeared and argued the matter. He submitted that in respect of Unit – I, the appellant is not contesting the duty liability and undertakes to pay the same after adjusting the amounts already paid. It is his contention that the authorities below did not give the benefit of payment of reduced penalty of 25% of duty demand and he prayed that the said option may be extended to the appellant in Unit – I.

4.2 In respect of Unit – II, the ld. consultant submitted that they do not contest the duty liability for 1994 – 95, 1995 – 96 and also for 1996 – 97. It is argued by him that the demand for the period 1997 – 98 is not sustainable for the reason that for the previous year that is 1996 – 97, the turnover is less than Rs.300 lakhs. Therefore, the appellant has rightly availed the SSI exemption provided in Notification No. 38/1997. In respect of Unit – II, the show cause notice demanded duty of Rs.2,68,455/-. In respect of the year 1997 – 98, in para 12.5.2 of the adjudication order, the adjudicating authority has excluded the value of Rs.84,585/- from the total turnover alleged in the show cause notice which is Rs.3,00,56,769/-. The corresponding duty liability then would be reduced to Rs.12,687/-. Further, if this amount of Rs.84,585/- is reduced from the turnover of Rs.3,00,56,769/-, the actual turnover for the year 1996 – 97 would be only Rs.2,99,72,184/-. Therefore, the turnover for the previous year would be less than Rs. 300 lakhs. Further, in para 12.6 of the adjudication order, the adjudicating authority records that the appellant (Unit – II) was availing SSI exemption and for this reason, it is concluded by the adjudicating authority that the appellants are therefore not eligible to claim the benefit of Notification No.38/1997 for the reason that they have availed MODVAT credit during the period 1997 – 98. This is factually incorrect. The appellant was paying normal rate of duty and also availed MODVAT credit in the year 1997 – 98. Further, Notification 38/97 was introduced on

27.6.1997. The appellant thereupon availed the benefit of SSI exemption as per this notification. Notification 38/97 allowed to pay concessional rate of duty of 80% of the normal duty. It did not bar availing MODVAT credit. Therefore, the appellants have rightly availed the SSI exemption as per Notification 38/97 and the findings of the adjudicating authority that the appellant has already availed SSI exemption under 1/93 and was availing MODVAT credit and therefore is not eligible for the SSI exemption is incorrect. He therefore pleaded that the demand in the case of Unit – II for the period 1997 – 98 cannot sustain and the penalties imposed to the tune of Rs.1,54,519/- also cannot sustain for the same reason.

5. The ld. AR Shri L. Nandakumar supported the findings in the impugned order.

6. Heard both sides.

7. The appellant is not contesting the duty liability in respect of Unit – I and is requesting only the benefit of reduced penalty of 25% of the duty amount in Appeal No. E/1144/2004. The said request of the appellant is legal and proper for the reason that the adjudicating authority ought to have given the option to pay the reduced penalty of 25% under section 11AC. Thus, the impugned order in Appeal No. E/1144/2004 stands modified to the extent of granting the option to pay reduced penalty of 25% of the duty amount only.

8. In respect of Unit – II (in appeal No. E/856/2003), the argument of the ld. counsel is that they are not contesting the duty demand for the period 1994 – 95, 1995 – 96 and 1996 – 97. In the show cause notice, the demand of duty in respect of Unit – II is Rs.2,68,455/- and the same has been confirmed by the authorities below. For the period 1997 – 98, the consultant has rightly pointed out that they have not been availing SSI exemption benefit under Notification 1/93-CE or 16/97-CE. The documents produced (RT 12 returns) for payment of duty from April 1997 to February 1998 shows that the appellants were paying the normal rate of duty at 13% till July 1997. They were also availing MODVAT credit since they were paying the normal rate of duty. Thereafter, when Notification 38/97 was introduced in June 1997, they claimed SSI exemption of the said notification. As per the said notification, the assessee has to pay reduced / concessional rate of duty at 60%/ 80%. The notification does not provide any bar for availing MODVAT credit. So also the notification in clause (iii) in para 2 states that when the manufacturer opts for benefit of this notification, the goods already cleared during the financial year prior to the SSI notification, the option shall be taken into account for computing the aggregate value of clearances. When the notification was introduced only in 27.6.1997, the appellants have availed the benefit of notification and paid reduced duty. The authorities

below have wrongly denied this notification stating that since the appellant has availed MODVAT credit and also because they have availed notification 1/93, in the financial year, they are not eligible for benefit of 38/97. After perusing the facts, we hold that the appellant is eligible for the SSI benefit under Notification 38/97. It is also to be noted that the adjudicating authority for the period 1996 – 97 has excluded the value of Rs.84,585/- and thus the turnover for the year 1996 – 97 which is the preceding financial year would be less than Rs.300 lakhs. Therefore, the appellant in Unit II would be rightly eligible for notification 38/97. The demand for this period which is Rs.1,54,519/- is therefore set aside along with the penalties. However, since the appellant is not contesting the duty liability and the penalty for the period prior to 1997 – 98, in respect of Unit – II, we are of the considered opinion that the same does not require interference. The appeals are partly allowed in the above terms, with consequential relief, if any.

(Pronounced in court on **13.11.2018**)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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