CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 41521 of 2014

(Arising out of Order-in-Appeal No. 73 to 75/2014 (M-III) dated 06.05.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. ABI Turnamatics, **: Appellant**
100% EOU,
Pulivalam, Banavaram,
Vellore District – 632 505

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

WITH

Excise Appeal No. 41522 of 2014

(Arising out of Order-in-Appeal No. 73 to 75/2014 (M-III) dated 06.05.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. ABI Turnamatics, **: Appellant**
100% EOU,
Pulivalam, Banavaram,
Vellore District – 632 505

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

AND

Excise Appeal No. 41523 of 2014

(Arising out of Order-in-Appeal No. 73 to 75/2014 (M-III) dated 06.05.2014 passed by the Commissioner of Central Excise (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. ABI Turnamatics, **: Appellant**
100% EOU,
Pulivalam, Banavaram,
Vellore District – 632 505

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate,
No. 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600 034

APPEARANCE:

Ms. K. Nancy, Advocate for the Appellant

Shri. S. Govindarajan, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs. 41181-41183 / 2019

DATE OF HEARING: 28.10.2019

DATE OF DECISION: 28.10.2019

PER : SULEKHA BEEVI C.S.

The issue involved in all these appeals being the same, they are heard and disposed of by this common order.

2.1 Brief facts are that the appellant is a manufacturer of components of turbo-chargers, castings and tools including Machined Bearing Housing Assembly and Turbine Housing Assembly falling under Chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. They manufactured and exported 'Machined Bearing Housing Assembly' but cleared 'Turbine Housing Assembly' in Domestic Tariff Area (DTA), availing exemption under Notification No. 23/2003-C.E. dated 31.03.2003. The Department was of the view that the Turbine Housing Assembly is not eligible for exemption under the Notification since the product cleared under DTA is not similar to the goods which are exported.

2.2 Show Cause Notices were issued proposing to demand duty along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the duty demands. In appeal, the Commissioner (Appeals) upheld the same. Hence, these appeals.

3.1 On behalf of the appellant, Ld. Counsel Ms. K. Nancy appeared and argued the matter. She submitted that both the items viz., Machined Bearing Housing Assembly and Turbine Housing Assembly are components of turbo-chargers and are classifiable under the same Tariff Item 8414 90 90 of the Central Excise Tariff Act and therefore, they are similar in nature.

3.2 The Department has sought to deny the benefit of exemption by relying upon paragraph 6.8 of the Export-Import Policy 2014-2019. The Tribunal in the case of ***M/s. Meghmani Industries Ltd. Vs. Commr. of C.Ex., Ahmedabad-I reported in 2010 (261) E.L.T. 411 (Tri. – Ahmd.)*** and ***Commissioner of Central Excise, Pune-I Vs. TELCO reported in 2000 (126) E.L.T. 1102 (Tribunal)*** has considered the meaning with regard to similar goods and has held that the definition available in the Customs Act cannot be used in respect of Notifications issued under another enactment. These decisions were followed by the Tribunal in the appellant's own case on the very same issue and decided in favour of the assessee vide ***Final Order No. 40319 of 2019 dated 19.02.2019.***

4. The Ld. Authorized Representative (A.R.) Shri. S. Govindarajan appeared on behalf of the Department. He supported the findings in the impugned order.

5. Heard both sides.

6. The issue is whether the rejection of benefit of the Notification is sustainable on the allegation that the goods cleared under DTA are not similar to the goods exported by the appellant.

7.1 The Adjudicating Authority has relied upon the definition of "similar goods" as provided in the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 to hold that the goods are not similar in nature. The Tribunal in the decisions relied on by the Ld. Counsel for the appellant has observed that the said meaning in the Customs Valuation Rules cannot be adopted for understanding the nature of the goods as to whether they are same.

7.2 The appellant has exported Machined Bearing Housing Assembly whereas the goods cleared in DTA seeking benefit of Notification No. 23/2003-C.E. is Turbine Housing Assembly. It is a fact that both of these are components of turbo-charger.

7.3 In the appellant's own case *(supra)*, the Tribunal after analyzing the said issue, has held in favour of the assesse. Following the said decision, we are of the considered opinion that the denial of benefit of the Notification and the demand of duty cannot sustain.

8. The impugned order is set aside.

9. The appeals are allowed with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

Sd/-

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sd/-

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Sdd