IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.41648 of 2013 &
Excise Miscellaneous Application (CO) No. 40936 of 2014

(Arising out of Order-in-Original No. MAD-CEX-000-COM-08/2013 dated 31.3.2013 passed by the Commissioner of Central Excise, Madurai)

Commissioner of GST & Central Excise **Appellant**
Central Revenue Building
No. 4, Lal Bahadur Shastri Road
Bibikulam, Madurai – 625 002.

Vs.

M/s. Vinod Kumar Match Industries **Respondent**
S. Keelapatti, Peraiyur Taluk,
H.O. No. 72, Javulikadai Street
Sivakasi – 626 123.

AND

Excise Appeal No.41649 of 2013 &
Excise Miscellaneous Application (CO) No. 40935 of 2014

(Arising out of Order-in-Original No. MAD-CEX-000-COM-07/2013 dated 31.3.2013 passed by the Commissioner of Central Excise, Madurai)

Commissioner of GST & Central Excise **Appellant**
Central Revenue Building
No. 4, Lal Bahadur Shastri Road
Bibikulam, Madurai – 625 002.

Vs.

M/s. Ganesh Kumar Match Industries **Respondent**
S. Keelapatti, Peraiyur Taluk,
H.O. No. 72, Javulikadai Street
Sivakasi – 626 123.

APPEARANCE:

Ms. K. Komathi, ADC (AR) for the Appellants
Shri S. Venkatachalam, Advocate for the Respondents

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. **40186-40187 / 2023**

Date of Hearing: 21.03.2023
Date of Decision: 23.03.2023

Per Ms. Sulekha Beevi C.S.

The above appeals are filed against the orders passed by Commissioner who set aside the demand of duty on the ground that the Show Cause Notices issued are time-barred.

2. Brief facts are that the respondents are manufacturers of safety matches falling under Chapter 36 of the First Schedule to CETA, 1985. Upon investigation, it was noticed that the respondents procured 'chemical dipped match splints' in bulk from mechanized match manufacturers like Saraswathi Match Industries, Peraiyur and We Two Match Industries, Sivakasi. These dipped match splints procured by them were packed in veneer or cardboard match boxes of 50 sticks each and affixed labels, packed again into bundles and sold them in market for retail consumption. While clearing such safety matches, the respondents claimed the benefit of full exemption from central excise duty under Notification No. 6/2002-CE dated 1.3.2002 as amended. The department noted that the dipped match splints procured by the respondents were actually manufactured using electricity and therefore the respondents are not eligible for the benefit of the said Notification. Separate Show Cause Notices dated 12.8.2009 were issued for the period 1.9.2004 to 31.3.2006 in Appeal No. E/41649/2013 and for the period 22.10.2004 to 31.3.2006 in Appeal No. E/41648/2013. After due process of law, the adjudicating authority dropped the proceedings holding that the extended period of limitation cannot be invoked and that the Show Cause Notices are time-barred. Against such order, the department is now before the Tribunal.

3. The learned AR Ms. K. Komathi reiterated the grounds of appeal. The learned AR submitted that the findings of the adjudicating

authority that the respondents were under bonafide impression that they were exempted from payment of duty under Notification No. 6/2002-CE dated 1.3.2002 is without any basis and without any evidence on record. She adverted to the Notification and submitted that the said notification exempts goods viz. safety matches from payment of duty when none of the following process are carried out without the use of electricity power:-

> *i. The process of giving -*
>
> *a. The cardboard flats or strips, the configuration of a match box including the outer slide or the inner slide, or*
>
> *b. The veneer flats or strips, the configuration of a match box including the outer slide or the inner slide with the use of match paper*
>
> *(ii) Frame filling*
>
> *(iii)* ***Dipping of splints in the composition for match heads***
>
> *(iv) Filling of boxes with matches*
>
> *(v) pasting of labels on match boxes of veneers or cardboards and*
>
> *(vi) packings*

4. Learned AR stressed that it is admitted by the respondents that the dipping of splints has been carried out with the aid of power. In other words, the respondents have purchased dipped match splints from manufacturers / suppliers who have manufactured the dipped splints with the aid of power. The above fact itself would show that the respondents are not eligible to avail the benefit of the notification.

5. The adjudicating authority while upholding the demand of duty on merits has dropped the demand as being hit by time-bar holding that the details of purchase of duty paid matches and sale of duty paid matches were furnished by the respondents for disputed periods. So also, it is observed that the respondents were under bonafide

impression that they are exempted from payment of duty. However, the statement given by the respondents on 13.3.2006 would show that they were fully aware that dipped match splints were manufactured by their suppliers using electricity. Even though the respondents knew that the dipped match splints procured by them were made using the aid of power, they have neither registered with the department nor paid the excise duty. These facts would show that there is willful suppression on the part of the respondents with intention to evade payment of duty. She prayed that the appeals may be allowed.

6. The learned counsel Shri S. Venkatachalam appeared and argued for the respondents. It is urged that the Commissioner has correctly observed that the respondents were under bona fide belief that they are eligible to avail the benefit of the notification. After procuring the dipped match splints, the respondents had bundled, labelled, packed and cleared them without payment of duty. The respondents were under the impression that as they were not using any power, they are eligible for the exemption of the notification. There was no suppression of facts and all the details were known to the department. In fact, the department had raised the issue as early as in 2005 when demand for payment of duty was made against Subathira Match Industries. The said match industry filed W.P. No. 771/2005 before the Hon'ble High Court of Madras. The writ petition was disposed with a direction to the assessee to file an appeal before the appropriate authority. They filed an appeal before the Commissioner (Appeals) and vide Order-in-Appeal No. 56/2005 dated 28.4.2005, the Commissioner (Appeals) held that they are eligible for exemption as per Notification No.6/2002-CE dated 1.3.2002. Similar demands were raised against other units who were

following the same process of bundling, labelling and packing duty paid dipped match splints. Thus, the issue was pending before other jurisdictional Commissionerates. The Assistant Commissioner of Central Excise, Madurai – I Division vide Order in Original No. 17/2008-CE dated 18.12.2008 dropped the demand in the case of Vijayarajan Match Industries. The match manufacturers' Association also took up the issue with the CBEC for clarification. From these facts, it is very clear that there was confusion with the view that has to be taken within the department itself. However, the Tribunal in the case of Sri Ganapathy Packing Vs. Commissioner of GST and Central Excise vide Final Order No. 41321to 41354/2019 dated 19.11.2019 as reported in 2020 (2) TMI 1114 CESTAT Chennai settled the issue on merits wherein it has been held that the respondents are not eligible for the benefit of the notification. It is submitted by the learned counsel that there was difference of opinion between the Members of the Tribunal wherein the issue on merits was held in favour of the respondents by one of the Members. All these would show that the issue as to whether the respondents are eligible for the benefit of exemption is an interpretational one. The respondents had not taken the registration and not paid central excise duty only on the bonafide belief that they are eligible for the benefit of notification.

7. The decision in the case of Orissa Bridge and Construction Corpn. Ltd. Vs. CCE, Bhubaneshwar reported in 2011 (264) ELT 14 (SC) was relied by the learned counsel to argue that when the department was aware of the facts, the Show Cause Notice issued after two years alleging misplacement of file cannot sustain. The decision in the case of Ispat Industries Ltd. Vs. CCE, Raigad reported in 2006 (199) ELT 509

(Tri. Mum.) was relied to argue that extended period cannot be invoked merely because the assessee did not interpret the provisions of law in the way department sought to interpret. The decision of the Hon'ble Supreme Court in the case of Padmini Products Vs. Collector of Central Excise reported in 1989 (43) ELT 195 (SC) was relied to argue that mere failure or negligence on the part of the manufacturer either not to take out the license or not to pay the duty when there was scope for doubt, the extended period cannot be invoked.

8. It is further argued that entire duty demand has been made on the basis of the invoices furnished by the respondents to the department. The respondents had purchased duty paid dipped match splints and all these invoices were properly accounted. There was no suppression of purchase of raw material or sale of finished products. The Commissioner has correctly analyzed these facts and held that the Show Cause Notices are time-barred.

9. Heard both sides.

10. From the facts narrated above, it can be seen that the issue on merits has already been decided in favour of the Revenue by the adjudicating authority. The department has come on appeal aggrieved by the very same order which set aside the demand on the ground that the Show Cause Notice is time-barred. The learned AR has been at pains to argue that the respondents knew that they are purchasing dipped match splints which have been manufactured using electricity and in such circumstances they ought to have obtained registration and paid excise duty. That therefore the respondents have suppressed facts. We are unable to find any substance in the argument put forward by the learned AR or in the grounds put forward in the appeals filed by

the department. With regard to interpretation of the notification, there were decisions in favour of the assessee as well as the Revenue. The Commissioner (Appeals), Tirunelveli vide Order-in-Appeal dated 28.4.2005 has referred to Board Notification NO. 1/93-CX-4 dated 2.12.1993 wherein Board clarified as under:-

> "In the present case parts are manufactured by a manufacturer with the aid of power. Such parts manufactured with the aid of power are purchased by another manufacturer of footwear who used such parts for manufacture of foot wear without the aid of power. So long as the second manufacturer does not use any power, in or in relation to manufacture of foot wear either in his factory or in the factory of his job workers, it cannot be construed that power has been used in the manufacture of foot wear only because the raw materials bought and used by him had been manufactured with the aid of power. This case is squarely governed by Circular No.4/87 C.E. dated 19.6.87".

11. It is discussed by the Commissioner (Appeals) that the said Circular would apply for interpretation of the notification 6/2002 and that the assessee is eligible for benefit of notification. The decision in the case of Omega Packing Ltd. Vs. Commissioner of Central Excise reported in 2000 (121) ELT 390 (Tri.) has also been adverted to by the Commissioner (Appeals) that the assessee is eligible for availing the notification. However, as per the Final Order passed by the Tribunal, the issue on merits was considered and decided against the assessee. There was a difference of opinion between the Members as to the interpretation of notification whether the assessee who does not use the aid of power is eligible for the benefit of Notification even though the raw materials have been manufactured by using the aid of power. All these aspects would indicate that the issue is purely interpretational in nature. We are in full agreement with the order passed by the adjudicating authority by which it is observed that the assessee was under bonafide belief that they are eligible for the benefit of

Notification. Moreover, in the present case, there are no new materials / evidence unearthed by the department which has formed the basis for determination of the duty. All the figures were available to the department as per the invoices submitted by the respondents. On such score, we agree with the adjudicating authority that the invocation of extended period cannot be justified. We uphold the impugned order. The appeals filed by the department are dismissed. The cross-objections filed by the respondents are accordingly disposed of.

(Pronounced in open court on 23.3.2023)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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