CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

EXCISE APPEAL NO. 1288 of 2012

[Arising out of Order-in-Appeal No. 37-CE/MRT-II/2012 dated 17/02/2012 passed by The Commissioner (Appeals), Customs and Central Excise, Meerut – II.]

M/s Sonai Auto Industries,
Plot No. A-120, Eldeco Industrial Park, Sitarganj,
District Udham Singh Nagar (Uttarakhand) **...Appellant**

Versus

The Commissioner (Appeals)
Customs & Central Excise,
Commissionerate II,
Meerut, Uttar Pradesh **...Respondent**

APPEARANCE:

None for the appellant.
Shri Sanjay Kumar Singh, Authorized Representative for the Department.

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 10.11.2021
DATE OF DECISION: 10.11.2021

FINAL ORDER No. 51933/2021

P.V. SUBBA RAO

This appeal is filed by the appellant assailing order-in-appeal dated 17.02.2012[1] passed by the Commissioner (Appeals), Meerut – II modifying the order of the Assistant Commissioner with consequential relief.

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[1] impugned order

2. No one has appeared on behalf of the appellant and it is found from records that nobody has been appearing even in the past.

3. We have heard the learned departmental representative and proceed to decide the matter on merits based on the submissions made in the appeal and the records of the case.

4. The appellant/assessee is a manufacturer of auto parts falling under Chapter 87 of the Central Excise Tariff and claimed the benefit of area based exemption Notification No. 50/2003-CE dated 10.06.2003 which was available to units which have started commercial production by 31 March 2010. The appellant issued an invoice for their final products in the month of March 2010. In view of the cut off date for the eligibility of the exemption notification, verification of such units was carried out by the departmental officers who visited the appellant's premises on 08.04.2010 and found that the factory had not yet been set up and the construction was at a basic stage and no plant or machinery were installed till that date. Only a grinder bench and a few hand presses were found. Thus, it was felt that it was impossible for the appellant to have manufactured any goods in March itself even before the plant was set up and that the invoice for final products issued in March 2010 was fraudulent to avail the benefit of the notification. A demand cum show cause notice dated 22.03.2011 was issued to the appellant proposing to deny the benefit of the exemption notification and recovery duty of

Rs.4,120 (Rupees four thousand one hundred and twenty only) on the goods cleared availing the benefit of the exemption notification and impose penalty and recovery interest on the duty.

5. The show cause notice was adjudicated by the Assistant Commissioner by his order dated 25.10.2011 as follows:

> “1. The party is not eligible to avail the benefit of the exemption notification no. 50/03 dated 10.6.2003 as they have failed to start their Commercial production on or before 31.03.2010 as provided in condition no. 1(a) of the notification, ibid.
>
> 2. The party is directed to pay Central Excise duty amounting to Rs. 4,120/-(including Ed. Cess & SHE Cess) along with interest under Section 11AB of the Central Excise Act, 1944.
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> 3. I also impose a penalty of Rs. 4,120/- on the party under Rule 25(1) of the Central Excise Rules,2002 for violating the provisions of the Central Excise Act, 1944 and rules made thereunder”.

6. Aggrieved, the appellant appealed to the Commissioner (Appeals) who passed the impugned order modifying the order of the Assistant Commissioner to the extent of giving the appellant the benefit of SSI exemption Notification No. 8/2003 dated 01.03.2003. On the eligibility of the exemption Notification No. 50/2003, he found in favour of the Revenue.

7. There is no appeal by the Revenue against this order of the Commissioner (Appeals) and, therefore, to the extent of allowing the benefit of the SSI exemption Notification No. 8/2003 dated 01.03.2003, the matter has attained finality.

8. This appeal has been filed by the appellant assailing the impugned order for disallowing exemption Notification No. 50/2003-CE dated 10.06.2003 on the following grounds:

(i) The order of the original authority was passed in violation of the principles of natural justice as no opportunity of personal hearing was given to the appellant and this matter was raised in the appeal before the Commissioner (Appeals) and in the impugned order, he has not given any finding on the matter.

(ii) The observations/findings of the Commissioner (Appeals) are contrary to the facts. They had started production before 31.3.2010 and had produced copies of the partnership deed, application for registration, letter from the State pollution control board, sanction of power connection, registration certificates with the State tax authorities, declaration filed with the central excise authorities, process flow chart for manufacture of the goods, purchase invoices for raw materials and capital goods, sales invoices and sales tax returns. Learned Commissioner (Appeals) has only relied on the Panchnama dated 8.4.2010 drawn by the officers of Central Excise on physical verification.

(iii) The appellant started commercial production before 31.3.2010.

9. We have considered the submissions in the appeal.

10. Learned Departmental Representative supported the impugned order.

11. There is no duty involved in the case as per the appeal memorandum filed by the appeal because they were given the benefit of another exemption notification by the Commissioner (Appeals). The appellant is only praying that they may be given the benefit of the exemption Notification No. 50/2003-CE.

12. The first ground of appeal is that the original authority had violated principles of natural justice by not giving them an opportunity of personal hearing and there was no finding of the Commissioner (Appeals) on this aspect. We find that the original authority recorded in paragraph 2 of his order as follows:

> "*2.* ***Case for the Party:-***
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> M/s. Sonai Auto Industries did not submit any defence reply to the show cause notice. As the party neither submitted any defence reply nor requested for personal hearing even after passing of a considerable time period, another letter dated 12.8.2011 was issued to the party directing them to submit their defence reply immediately and also to inform that whether they want to avail the

opportunity of personal hearing before the case is adjudicated. But the party neither submitted any defence reply nor requested for personal hearing in the matter. Thereafter, the case was taken up for adjudication based on the case records available in the case file”.

13. We also notice that in the show cause notice itself the appellant was asked to submit a reply and also indicate if it wished to be heard in person. This, in our considered view, is not a case of the principles of natural justice being violated but is a case where the appellant chose not to utilise the opportunity of defending its own case and then trying to benefit from its own decision by accusing the original authority of not giving an opportunity of personal hearing. We, therefore, find no force in this submission.

14. The second ground of appeal is that the observations of the Commissioner (Appeals) are contrary to facts. The appellant tried to counter the Panchnama recorded by the officers by relying on various documents which it had submitted to various state and other authorities. A perusal of the documents listed shows that these are either licences or registrations obtained by the appellant or applications or declarations filed by it to various authorities. None of these is a document establishing that the commercial manufacture had commenced before 31 March 2010. The only document which was based on actual physical verification was the Panchnama drawn by the Central Excise officers on 08.04.2010. Evidently, if the construction was at a basic stage on that day, it

could not have already been completed prior to this date. If the appellant disagreed with the Panchnama, it could have assailed it, cross examined the officers or witnesses before the original authority. The Panchnama was one of the Relied upon Documents (RUD-3) in the show cause notice. The appellant did no such thing. None of the documents which are said to have been produced before the Commissioner (Appeals) pertain to physical verification and finding of any authority to show that the factory was set up and commercial production commenced before 31 March 2010. Therefore, we find no force in this ground of appeal also.

15. The third ground of appeal is that the appellant commenced commercial production prior to 31 March 2010. We find it very hard to believe this assertion when the plant itself was not set up before 31 March 2010 as per the Panchnama drawn on physical verification. The Panchnama mentions that in a room only a few hand presses and one grinder bench were lying at the time of verification. We therefore, find no force in this ground of appeal of the appellant also.

16. We also note that any exemption notification must be construed strictly against the person claiming it and in favour of the Revenue and in case of doubt, the benefit of doubt should go in favour of the Revenue and against the assesses as held by the Supreme Court in **Commissioner of Customs (Import)**

Mumbai versus Dilip Kumar and Company[2]. In this case, we find the facts of the case are overwhelmingly in favour of Revenue and, therefore, find that the appellant is not entitled to the benefit of exemption Notification No. 50/2003-CE dated 10.06.2003 and the impugned order needs to be upheld.

17. The appeal is therefore, dismissed and the impugned order is upheld.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER(TECHNICAL)

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[2] **2018(361) E.L.T. 577 (S.C.)**