

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

EXCISE APPEAL NO.50077 of 2020

[Arising out of Order-in-Appeal No.84-85/CE/DLH/2018 dated 29.11.2018 passed by the Commissioner (Appeals-I), New Delhi].

**M/s. Ashoka Technical
Consultant and Engineers**

...Appellant

Through Proprietor: Ashok Sharma,
Khasra No.571, Nehru Enclave,
Near BDO Office Alipur, Delhi-110036

Now at:

298, Third & Fourth Floor,
Ghalib Apartments s, Parwana Road,
Pitampura, New Delhi – 110034.

VERSUS

The Commissioner, CGST

...Respondent

17B, IAEA Building, MG Road, IP Estate,
New Delhi-110002

APPEARANCE:

Mr.Sidharth Malhotra & Mr. Prince Wadhwa, Advocates appeared for the appellant
Mr. Sanjay Kumar Singh, Authorised Representative for the Respondent

Coram:

HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 27/06/2023

FINAL ORDER NO.50903/2023

DR. RACHNA GUPTA

The appellant herein is engaged in the activities of manufacturing and trading of agricultural machineries, namely, Rice milling Machines such as Rice/ paddy cleaner, Rice/ paddy De-stoner,

Rice precision sizer, Rice elevators, rice conveyors and its various components (hereinafter referred to as "the impugned finished goods") and they were classifying their finished goods under CETH 8437 which was subject to 'Nil' rate of duty. Pursuant to an intelligence received in Central Excise Commissionerate, Delhi, the factory premises of the appellant's firms were searched. It was found that the firm was not registered with the Central Excise Department and the appellants were not discharging their liability of Central Excise duty on the goods, namely, conveyors and elevators which are classifiable under chapter heading 8428. Denying the said two machines to be the part of rice mill plants that a Show Cause Notice No.1856 dated 30.12.2016 was served upon the appellants proposing the recovery of an amount of Rs.20,77,690/- for the period 2013-14 to 2016-17 (upto December, 2016) alongwith interest and the penalties both the authorities below have confirmed the said proposal.

2. We have heard Mr. Sidharth Malhotra & Mr. Prince Wadhwa Id. Counsels for the appellant and Mr. Sanjay Kumar Singh, Id. Authorised Representative for the Department.

3. Ld. Counsel for the appellant has mentioned that the issue has already been decided by this Tribunal. It is mentioned that the appellant has one unit in Haryana also and there has been already decision in favour of the appellant by the Department itself vide order dated 19.11.2019. The earlier order of CESTAT, Chandigarh in the case of **M/s. Annapoorna Agronics Machinery Pvt. Ltd. vs. CCE & ST-Sonepat (Delhi-III)** has been relied upon wherein the

conveyors and elevators used by the agricultural machinery traders are held to be classifiable under Chapter Heading 8437 instead of Chapter Heading 8428. Ld. Counsel has requested the same relief in the present appeal. Ld. D.R. while rebutting these submissions has brought to the notice that Commissioner (Appeals) has rejected the appeal only for non-compliance of section 35 F of the Central Excise Act, 1994 read with section 83 of Finance Act 1994. Appeal is prayed to be disposed of, accordingly.

4. Having heard both the parties and observing that Commissioner (Appeals) has not touched the merits, as have been elaborated by the Ld. Counsel for the appellant before the Bench today. We observe that the Commissioner (Appeals) has rejected the appeal for want of the amount of mandatory pre-deposit of 7.5% of duty and penalty to have been deposited by the appellant, which was not deposited by the appellant before filing the impugned appeal. From the record, we observe that the total 10% of the amount of duty and penalty has now been deposited i.e. an amount of Rs.207769/- has already been deposited by the appellant on 30th July, 2019. The said payment is observed to have included the requisite amount of 7.5% as was supposed to be deposited by the appellant at the time of filing appeal before Commissioner (Appeals).

5. In the given circumstances, we observe that there is sufficient compliance of section 35 F of the Central Excise Act, as of now. However, the order under challenge is not on merits but on the said technical ground of nonpayment of pre-deposit amount as is required

for filing appeal before Commissioner (Appeals). Accordingly, we deem it necessary that Commissioner (Appeals) shall render his findings with reference to the merits of the appeal as was filed before him. Accordingly, the matter in question is hereby remanded to Commissioner (Appeals) to give the findings qua the merits of the impugned case, after affording reasonable opportunity of hearing to both the parties. It is desired that the matter be disposed of within a span of 4 (four) months from the date of receipt of this order. Registry is directed to do the needful at the earliest. Consequent to the discussion above, the appeal stands allowed by way of remand.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)