

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH, COURT NO. 1

EXCISE APPEAL NO. 50442 OF 2021

[Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-087-2020-21 dated 17.12.2020 passed by the Commissioner (Appeals) Customs, CGST & Central Excise, Indore (MP)]

M/S JAJOO SURGICALS PVT LTD

.....Appellant

61-A-62, A.B. Road,
Industrial Area No. 3,
Dewas (MP)

Vs.

**COMMISSIONER (APPEALS) CENTRAL
EXCISE & CGST-INDORE**

.....Respondent

Manik Bagh Palace,
P. B. No. 10,
Indore (MP)

Appearance:

Ms. J. Kainaath, Advocate for the Appellant

Shri Unmesh Kumar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

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

FINAL ORDER NO. 58765 /2024

Date of Hearing /Decision: 09/09/2024

P.V. SUBBA RAO:

1. M/s Jajoo Surgicals Pvt Ltd.¹ filed this appeal to assail the Order-in-Appeal dated 17.12.2020 passed by the Commissioner (Appeals), Indore, whereby he upheld the Order-in-Original dated 17.09.2020 passed by the Assistant Commissioner and rejected the appellant's appeal.

1 **appellant**

2. The appellant is registered with the central excise and manufactures cotton products such as non-absorbent cotton, absorbent cotton wool, etc. The question which falls for consideration in this appeal is whether the non-absorbent cotton manufactured by the appellant merits classification under Central Excise Tariff Heading 5203 as asserted by the appellant or under chapter heading 3005 as held in the impugned order. The appellant has been clearing the non-absorbent cotton wool classifying it under Central Excise Tariff Item² 5203 00 00 and absorbent cotton wool under CETI 5601 21 10 and availing the benefit of Notification No. 30/2004-CE dated 09.07.2004. The appellant's claim is that its products are not medicated. It had been filing central excise returns regularly.

3. The appellant's premises were searched by the officers of Directorate General of Central Excise Intelligence³ who found that the appellant was manufacturing bandages, crepe bandages, dressing pad, swab, soft roll/soft orthopedic roll, gauze swabs, disinfected compressed, non-absorbent cotton etc., and clearing them without payment of duty claiming the benefit of Exemption Notification No. 30/2004-CE dated 09.07.2004. DGCEI formed an opinion that the goods were meant for medical purposes and, therefore, deserve to be classified under Central Excise Tariff Heading 3005. After the investigation was completed by DGCEI, the Assistant Commissioner issued a show cause notice dated 21.02.2018 proposing to classify the non-absorbent cotton manufactured by the appellant under Central Excise Tariff Heading 3005 and recover the differential duty of Rs.

2 CETI
3 DGCEI

3,52,471/-. The appellant opposed the proposals in the show cause notice⁴ which were, however, confirmed by the original authority and upheld by the Commissioner (Appeals) in the impugned order. Aggrieved, the appellant is before us.

4. Learned counsel for the appellant made the following submissions:

- (a) The SCN, Order in Original and the impugned order are against the facts and law and hence are not sustainable. The appellant had correctly classified the products and availed the benefit of the Notification No. 30/2004.
- (b) The Commissioner (Appeals) had decided the appeal only in regard to classification of non-absorbent cotton packed in retail packs and held that they should be classified under 3005 90 90. He noted that in the proceedings for an earlier period was decided by the Commissioner (Appeals) in favour of the appellant by Order in Appeal dated 29.04.2019. However, since that order was accepted by the department on monetary ground he said that it cannot be a precedent and was not binding on him.
- (c) This Tribunal had also passed Final Order dated 11.10.2018 in favour of the appellants for another period relying on the decision in **M/s Shanti Surgical Pvt Ltd. & Others vs. CCE, Kanpur**⁵.

4 SCN
5 2017 (TIOL) 2153(CESTAT-ALL)

- (d) This order of the Tribunal was placed before the Commissioner (Appeals) which he refused to follow on the ground that the order of the Tribunal was in pursuance of a separate proceedings. He also refused to follow **Shanti Surgicals** wrongly recording that the case of **Shanti Surgicals** was regarding absorbent cotton wool and not in respect of non-absorbent cotton wool. The order of the Tribunal in **Shanti Surgicals** clearly states that it covers both absorbent cotton wool and non-absorbent cotton wool;
 - (e) Part of the demand is time barred because there is no evidence of suppression. This is only a periodical demand by the department;
 - (f) In view of above, the appeal may be allowed and the impugned order may be set aside.
5. Learned authorized representative appearing for the department vehemently supported the impugned order.
6. We have gone through the records of the case and considered the submissions by both sides.
7. The short question to be decided is if the non-absorbent cotton wool manufactured by the appellant is classified under CETI 5203 00 00 as asserted by the appellant or under chapter heading 3005 as held in the impugned order.
8. The Commissioner (Appeals) did not dispute that the matter was decided by his predecessor for an earlier period in favour of the appellant. However, he refused to follow the binding legal precedent stating that since the department accepted the order of the

Commissioner (Appeals) for the earlier period on monetary grounds, it cannot be a precedent and that it was not binding on him.

9. The Commissioner (Appeals) also noted that the Tribunal passed Final Order dated 11.10.2018 in case of the appellant itself that absorbent cotton wool should be classified under chapter heading 5601 and hence will be eligible of the Exemption Notification No. 30/2004. However, he refused to follow the Tribunal's order on the ground that the earlier decision of the Tribunal was in pursuance of another proceedings.

10. The Commissioner (Appeals) also noted that the appellant relied on the order of the Tribunal in case of **Shanti Surgicals** but refused to follow the decision on the ground that it was with respect to absorbent cotton wool and since the disputed goods were non-absorbent cotton wool the order of the Tribunal is not binding on him.

11. In view of the above, the Commissioner (Appeals) upheld the classification, demand of duty and penalties imposed by the Assistant Commissioner.

12. We are surprised that Commissioner (Appeals) is under the erroneous impression that the ratio of any judgment or an order by his predecessor or any Tribunal depends upon the acceptance of that order by the department. He failed to understand that he was a quasi-judicial authority called upon to adjudicate disputes between the Revenue and the assessee. Every order and judgment of any authority, Tribunal or Court is binding and it does not depend on the willingness or acceptance of the order by either party. The department is a party to the dispute before the Commissioner (Appeals) and so is the assessee. Unless the

order is set aside or stayed by a superior judicial forum, it is also binding as a precedent on the successors. The precedential value of the order does not get reduced if either the department does not accept or the assessee does not accept it. In fact, the very expression that the order is not acceptable is an objectionable one as held by the Supreme Court in case of **Union of India vs. Kamlakshi Finance Corporation Limited**⁶ as below:

"5. The learned Additional Solicitor General, however, submits that the learned Judges have erred in passing severe strictures against the two Assistant Collectors who had dealt with the matter. He submitted that these officers had given reasons for classifying the goods under Heading 39.19 and not 85.46 and could do no more. He submitted that they acted *bona fide* in the interests of Revenue in not accepting a claim which, they felt, was not tenable.

6. Sri Reddy is perhaps right in saying that the officers were not actuated by any *mala fides* in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or of any factual *mala fides* but with the fact that the officers, in reaching their conclusion, by-passed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject-matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

7. The impression or anxiety of the Assistant Collector that, if he accepted the assessee's contention, the department would lose revenue and would also have no remedy to have the matter rectified is also incorrect. Section 35E confers adequate powers on

the department in this regard. Under sub-section (1), where the Central Board of Excise and Customs [Direct Taxes] comes across any order passed by the Collector of Central Excise with the legality or propriety of which it is not satisfied, it can direct the Collector to apply to the Appellate Tribunal for the determination of such points arising out of the decision or order as may be specified by the Board in its order. Under sub-section (2) the Collector of Central Excise, when he comes across any order passed by an authority subordinate to him, if not satisfied with its legality or propriety, may direct such authority to apply to the Collector (Appeals) for the determination of such points arising out of the decision or order as may be specified by the Collector of Central Excise in his order and there is a further right of appeal to the department. The position now, therefore, is that, if any order passed by an Assistant Collector or Collector is adverse to the interests of the Revenue, the immediately higher administrative authority has the power to have the matter satisfactorily resolved by taking up the issue to the Appellate Collector or the Appellate Tribunal as the case may be. In the light of these amended provisions, there can be no justification for any Assistant Collector or Collector refusing to follow the order of the Appellate Collector or the Appellate Tribunal, as the case may be, even where he may have some reservations on its correctness. He has to follow the order of the higher appellate authority. This may instantly cause some prejudice to the Revenue but the remedy is also in the hands of the same officer. He has only to bring the matter to the notice of the Board or the Collector so as to enable appropriate proceedings being taken under S. 35E(1) or (2) to keep the interests of the department alive. If the officer's view is the correct one, it will no doubt be finally upheld and the Revenue will get the duty, though after some delay which such procedure would entail.

8. We have dealt with this aspect at some length, because it has been suggested by the learned Additional Solicitor General that the observations made by the High Court, have been harsh on the officers. It is clear that the observations of the High Court, seemingly vehement, and apparently unpalatable to the Revenue, are only intended to curb a tendency in revenue matters which, if allowed to become widespread, could result in considerable harassment to the assessee-public without any benefit to the Revenue. We would like to say that the department should take these observations in the proper spirit. The observations of the High Court should be kept in mind in future and utmost regard should be paid by the adjudicating authorities and the appellate authorities to the requirements of judicial discipline and the need for giving effect to the orders of the higher appellate authorities which are binding on them."

13. The Commissioner (Appeals) has failed to observe judicial discipline.

14. The classification of non-absorbent cotton wool under CETI 5203 100 100 as claimed by the appellant is upheld.

15. The impugned order was passed by the Commissioner (Appeals), therefore, deserves to be set aside.

16. The appeal is, accordingly, allowed and the impugned order is set aside with consequential relief to the appellant.

(Order pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

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