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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

STAY Application No. : E/Stay/2056/2010, E/Stay/2057/2010, E/Stay/2058/2010, E/Stay/2059/2010, E/Stay/2060/2010, E/Stay/2061/2010, E/Stay/2062/2010, E/Stay/2063/2010 & E/S/1276/2011-EX
Appeal No. : E/2155/2010-EX[DB], E/2156/2010-EX[DB], E/2157/2010-EX[DB], E/2158/2010-EX[DB], E/2159/2010-EX[DB], E/2160/2010-EX[DB], E/2161/2010-EX[DB], E/2162/2010-EX[DB]&1033/2011-EX

Dated: **24/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,

BHAGWATI PIPES,
188-89, 116-17 & 52B, INDUSTRIAL
AREA, SICOP, KATHUA (J&K)

BHAGWATI PIPES, (Appellant)

VS

C.C.E. JAMMU (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/846-854/2012-EX[DB] & STAY ORDER NO. 1117-1125/2012-EX** dated **20/07/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. Respondent
C.C.E. JAMMU
OB-32, RAIL Head Complex, Jammu - 180012.

2. Advocate(s) / Consultant(s):
RENU GUPTA,ADVOCATE
1058, SECTOR-3, R.K.PURAM, N DELHI-22

3. C.D.R
4. Bar Association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New Delhi

6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3

7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
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Assistant Registrar
EXCISE Appeal Branch

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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I
DATE OF HEARING : 05/07/2012.
DATE OF DECISION : 20/07/2012.

Excise Stay Application No. 2056-2063 of 2010 in Appeal No. 2155-2162 of 2010 and
Excise Stay Application No. 1276 of 2011 in Appeal No. 1033 of 2011

[Arising out of the Order-in-Appeal No. 515-522/CE/Appeal/Chd-II (J&K) 2010 dated 26/04/2010 and No. 36/CE/Appeal/Chd-II (J&K) 2011 dated 31/01/2011 both passed by The Commissioner (Appeals), Central Excise, Chandigarh.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

M/s Bhagwati Pipes — Appellant

Versus

CCE, Jammu — Respondent

Appearance

Ms. Renu Gupta, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) - for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

STAY order No. 1117-1125/2012-Ex(BR)
FINAL Order No. A/846-854/12-Ex(BR) Dated : 20/7/12

Per. Rakesh Kumar :-

The facts leading to these appeals are, in brief, as under.

1.1 The appellant are a manufacturer of MS Conduit Pipes chargeable to Central Excise Duty under Chapter 72 and 73 of the Central Excise Tariff. Their unit is located in the State of J&K at Plot No. 88-89, 116-117 and 52B, SICOP Industrial Area, Kathua. During the period of dispute, the appellant were availing area based exemption under Notification No. 56/2002-CE. As per the certificate of Naib Tehsildar Kathua, the unit is located in Khasra No. 117/34 and 126/68/37 min which was previously falling in Chak Ram Singh, and which is now possessed by Ceramics factory and is part of SICOP/SIDCO Industrial Area, Kathua and that plot No. 88-89, 166-117 and 52B, fall in Khasra No. 126/68/37 min where the workshop and factory is existing. On the basis of the above certificate of Naib Tehsildar Kathua, the Jurisdictional Assistant Commissioner, Central Excise being of the view that the Khasra No. where the unit is located is mentioned at Sl. No. (2) (II) (C) (1)/(2) (Kathua District) in Annexure II of the Notification No. 56/2002-CE dated 14/11/02, extended the benefit of this exemption and allowed the refund of the duty paid through PLA. The refund orders passed by the Assistant Commissioner were reviewed by the Commissioner and review appeals were filed before the Commissioner (Appeals) on the ground that the Khasra No. on which the appellant unit is located, are not mentioned against the Industrial Area specified in the Annexure to the Notification No. 56/2002-CE. In all, nine such review appeals were filed, out of which eight appeals were disposed of by CCE (Appeals) by a common order-in-appeal No. 515-522/CE/Appeal/Chd-II/JK/2010 dated 26/4/10 and one appeal was disposed of by order-in-appeal No. 36/CE/Appeal/ CHD-II (J&K) 2011 dated 31/1/2011, by which the Commissioner (Appeals) allowed the Revenue's appeals and disallowed the exemption to the appellant holding that the Khasra Nos. on which the unit is located is not mentioned against the Industrial Area in Annexure II to the notification. The Commissioner (Appeals) observed that while the unit is located in SICOP Industrial Estate, on going through the exemption Notification, it is found that Khasra No. 126/68/37 min on which the unit is situated, does not figure against SICOP Industrial Estate at Sl. (2) (II) (C) (1) of Annexure II of Notification No. 56/2002-CE. The Commissioner (Appeals) also observed that in view of the Apex Court's judgment in the case of **CCE, Trichy vs. Rukmani Pakkwell Traders** reported in **2004 (165) E.L.T. 981 (S.C.)**, the exemption notifications are to be strictly construed. Against these orders of Commissioner (Appeals), these appeals have been filed.

2. Heard both the sides.

3. Ms. Renu Gupta, Advocate, the learned Counsel for the respondent, pleaded that in terms of the certificate dated 9/12/05 of Naib Tehsildar, Kathua, the plot numbers of the

appellant company - 88-89, 116-117 and 52B, SICOP Industrial Area, Kathua fall in Khasra No. 126/68/37 min, that according to this certificate this Khasra No. is now part of SICOP/ SIDCO Industrial Area, Kathua, that Khasra No. 126/68/37 min is mentioned against Sl. No. (2) II (C) (2) of the Annexure II to the Notification No. 56/2002-CE against "Industrial Estate SIDCO Kathua", that the Industrial Estate of SICOP and SIDCO of Kathua are adjoining Industrial Estates separated by a road and Khasra No. 126/68/37 is part of both the industrial estates, that even Naib Tehsildar Kathua's certificate mentions Khasra No. 126/68/37 as part of both - SICOP as well as SIDCO Industrial Area, that exemption Notification No. 56/2002-CE extends duty exemption in respect of the goods covered by this notification, manufactured in the units located in Industrial Growth Centres, Industrial Infrastructure Development Centres, Export Promotion Industrial parks or Industrial Estates or Industrial Areas or Commercial Estates or Scheme areas, as the case may be, specified in Annexure II to the Notification, that in Annexure II to the Notification both SICOP Industrial Estate and SIDCO Industrial Estate in Kathua District are notified, that in view of this irrespective of whether the unit is located in SICOP Industrial Estate or SIDCO Industrial Estate, Kathua, the same would have to be treated as located in the specified area and would be eligible for duty exemption and that the just because the Khasra No. 126/68/37 min is not mentioned against Sl. No. II (C) (1) pertaining to Industrial Estate SICOP, the exemption under this Notification cannot be denied.

4. Shri R.K. Verma, the learned Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and pleaded that when the unit is located in Industrial Estate SICOP, Kathua and is located in Khasra No. 126/68/37 min and this Khasra No. is not mentioned in the Sl. No. (2) (II) (C) (1) of Annexure II to the Notification, pertaining to Industrial Estate SICOP, Kathua, the appellant would not be eligible for duty exemption even if the Khasra No. 126/68/37 min is mentioned against Sl. No. (2) (II) (C) (2) pertaining to Industrial Estate SIDCO, Kathua. He, therefore, pleaded that there is no infirmity in the impugned order.

5. We have carefully considered the submissions from both the sides and perused the records.

6. There is no dispute that the appellant's unit is located at Plot No. 88-89, 116-117 and 52B in Industrial Area, SICOP, Kathua and this plot falls in Khasra No. 126/68/37 min. There is also no dispute that this Khasra No. is mentioned against Sl. No. (2) (II) (C) (2) of Annexure II pertaining to Industrial Estate, SIDCO, Kathua. The point of dispute is as to whether exemption can be denied just because the Khasra No. 126/68/37 min is not mentioned against Sl. No. (2) (II) (C) (1) pertaining to Industrial Estate SICOP, Kathua in which the unit is located. According to the certificate dated 9/12/05 of Naib Tehsildar Kathua, the plot No. 88-89, 116-117 and 52B falls in Khasra No. 126/68/37 min

where the workshop and factory is existing. In this regard, the report dated 9/12/05 of Naib Tehsildar Kathua is as under :-

> "It is submitted that vide order of Naib Tehsildar Kathua on the application of Rajender Ghai, Proprietor of M/s Bhagwati Pipes, Industrial Area, Kathua, on perusal of the record, it was found that the said Industrial Unit being installed in Khasra No. 117/34 and 126/68/37 min, which was falling in Chak Ram Singh, which is now possessed by Ceramics factory, is part of SICOP/SIDCO Industrial Area, Kathua.
>
> Further, plot No. 88-89, 116-117 and 52B falls in Khasra No. 126/68/37 min where the workshop of the factory is existing".

Thus, from the Naib Tehsildar Kathua certificate it is clear that - (a) the plot No. 88-89, 116-117 and 52B on which the appellant's factory is located, falls in Khasra No. 126/68/37 min and (b) the Khasra No. 126/68/37 min is now part of SICOP/ SIDCO Industrial Area, Kathua. Both Industrial areas SICOP as well as SIDCO figure in the Annexure II to the Notification No. 56/2002-CE and against Industrial Estate SIDCO, Kathua, Khasra No. 126/68/37 min is mentioned. In our view, just because the appellant's factory is located in Industrial Estate SICOP and against Industrial Estate SICOP Khasra No. 126/68/37 min is not mentioned, the exemption Notification cannot be denied, as Naib Tehsildar, Kathua's certificate mentions Khasra No. 126/68/37 min as part of "SICOP/SIDCO Industrial Area, Kathua".

7. Moreover, the exemption Notification No. 56/2002-CE exempts the goods covered by this notification, manufactured by the units located in the Industrial Growth Centres, Industrial Infrastructure Development Centres or Export Promotion Industrial Parks or Industrial Estates or Industrial areas or Scheme areas or Commercial Centres, as specified in Annexure II to the Notification. Thus, if unit is located in the Industrial area which is mentioned in Annexure II to the Notification, in our view the condition of the notification would be satisfied and the duty exemption under this notification cannot be denied. Though the Annexure II to the notification besides mentioning the Industrial Areas/Industrial Estates etc. also mentions against each Industrial Area/Industrial Estate, the Khasra No. covered by that Industrial Area, just because the Khasra No. on which unit is located does not figure in the list of Khasra number mentioned against the Industrial area in which the unit is located, the exemption cannot be denied so long as there is no dispute that the Industrial area in which the unit is located, is notified in the notification, as there can be mistake in mentioning the Khasra numbers covered by a particular Industrial area or there may be cases where a particular Khasra number is part of two adjacenet industrial areas.

8. In the present case, Department does not dispute that the appellant's unit is located in SICOP Industrial Area, Kathua and that SICOP Industrial Area, Kathua figures in the Annexure II to the Notification against Sl. No. (2) (II) (C) (1). In view of this,

just because the Khasra No. 126/68/37 min of the plot on which the unit is located, is not mentioned against SICOP Industrial Area, but is mentioned against adjoining SIDCO Industrial area, the benefit of exemption cannot be denied. The impugned orders are, therefore, not sustainable. The same are set aside. The appeals are allowed.

(Order pronounced in open court on 20/07/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

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