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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/1993/2009, E/Stay/1994/2009, E/Stay/1995/2009, E/Stay/1996/2009, E/Stay/1997/2009, E/Stay/1998/2009, E/Stay/1999/2009, E/Stay/2000/2009, E/Stay/2001/2009, E/Stay/2002/2009
Appeal No. : E/1938/2009-EX[DB], E/1939/2009-EX[DB], E/1940/2009-EX[DB], E/1941/2009-EX[DB], E/1942/2009-EX[DB], E/1943/2009-EX[DB], E/1944/2009-EX[DB], E/1945/2009-EX[DB], E/1946/2009-EX[DB], E/1947/2009-EX[DB]

Dated: **31/07/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. JAMMU
OB-32, RAIL Head Complex, Jammu - 180012.

C.C.E. JAMMU (Appellant)

VS

B.R.AGROTECH LTD (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/868-877/2012-EX[DB]** , Stay Order No. **SO/1151-1160/2012** dated **25/07/2012** 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. <u>Respondent</u>
B.R.AGROTECH LTD
Industrial Area,SIDCO Kathua(J&K)

2. **<u>Advocate(s) / Consultant(s):</u>** SH. B.L. NARASIMHAN, ADV., B-6/10, S.J. ENCLAVE, N. DELHI-29

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
12. Office Copy
13. Gaurd File

Assistant Registrar
EXCISE Appeal Branch

P.T.O.-2

14. **CHENAB AGRO-CHEM LTD.**
SICOP Industrial Area, Kathua(J&K).

15. **BHARAT UDYOG.**
SICOP Industrial ARea,Kathua.

16. **NATURAL HERBAL PRODUCTS.**
38-B,SICOP Industrial Estate,
Kathua(J&K)

17. **CARDINAL CHEMICALS PVT LTD.**
SICOP Industrial Area, Kathua(J&K)

18. SH. S.K. MALHOTRA, CA
K.C. PLAZA, RESIDENCY ROAD,
JAMMU - 180001

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 : 25/07/2012.

Excise Stay Application No. 1993 and 1996 of 2009 in Appeal No. 1938 and 1941 of 2009

CCE, Jammu — Appellant

Versus

M/s B.R. Agrotech Ltd. — Respondent

Excise Stay Application No. 1994-1995 of 2009 in Appeal No. 1939-1940 of 2009 and
Excise Stay Application No. 1997-1998 of 2009 in Appeal No. 1942-1943 of 2009

CCE, Jammu — Appellant

Versus

M/s Chenab Agrochem Ltd.]
M/s Bharat Udyog]
M/s Natural Herbal Products] — Respondents

Excise Stay Application No. 1999, 2000-2002 of 2009 in Appeal No. 1944-1947 of 2009

CCE, Jammu — Appellant

Versus

M/s Cardinal Chemicals Pvt. Ltd. — Respondent

[Arising out of the Order-in-Appeal No. 323-337/CE/APPL/JAL (J&K)/ 2009 dated 31/03/2009 passed by The Commissioner (Appeals), Central Excise Commissionerate, Jalandhar.]

For Approval and signature :

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? :

Appearance

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

None for M/s B.R. Agrotech, M/s Chenab Agrochem Ltd.
Shri B.L. Narasimhan, Advocate for M/s Bharat Udyog and M/s Natural Herbal Products - for the respondent.
Shri S.K. Malhotra, C.A. for M/s Cardinal Chemicals Pvt. Ltd. – for the respondent.

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

STAY order No 1151–1160/2012–Ex (BR)
FINAL Order No. A/868-877/12-Ex (BR) Dated : 25/7/12

Per. Rakesh Kumar :-

The respondents are the manufactures located in the State of Jammu & Kashmir. They manufacture the goods covered by the exemption Notification No. 56/2002-CE and according to them their units are located in the areas specified in this notification. The exemption under Notification No. 56/2002-CE is applicable to the goods covered by this exemption notification manufactured and cleared by the units located in industrial growth centres, industrial infrastructure development centres, export promotion industrial parks, industrial Estates, industrial areas, commercial estates or scheme areas, as the case may be, specified in Annexure II to this notification. The respondents in this case, availing of exemption under this notification had applied to the Jurisdictional Assistant Commissioner for refund of the duty paid through PLA, which was refunded to them by the Jurisdictional Assistant Commissioner. However, the Assistant Commissioner's orders were reviewed by the Commissioner and review appeals were filed to the Commissioner (Appeals) on the ground that for the benefit of Notification No. 56/20902-CE three conditions are required to be satisfied simultaneously, namely, the goods being covered by the notification, that is, being other than those specified in Annexure I, the unit being located in the industrial areas specified in Annexure II to the Notification and the unit must also be located in Khasra number specified against the specified industrial area of Annexure II. According to the department, while the goods being manufactured are covered by the notification, and the units of the respondents are located in the industrial areas specified in Annexure II of the notification, they are not located in the Khasra number specified against those industrial areas in the Notification and, therefore, the respondents are not eligible for exemption under Notification No. 56/2002-CE. The Commissioner (Appeals) by a common order-in-appeal dated 31/3/09 dismissed the review appeals holding that the respondents are eligible for the exemption under Notification No. 56/2002-CE and the refund claims filed by the respondents have been correctly allowed to them. Against this order of the Commissioner (Appeals), these appeals have been filed by the Revenue.

2. Heard both the sides.

3. Shri R.K. Verma, the learned Departmental Representative, assailed the impugned order by reiterating the grounds of appeal the Revenue's appeal and pleaded that while the goods being manufactured by the respondent units are covered by the exemption notification and the industrial areas in which the units are located, are also specified in Annexure II to the Notification, the Khasra numbers in which the units are located are not specified against the industrial areas and, therefore, the Commissioner (Appeals)'s order extending the benefit of the exemption to these units is not correct. He emphasised in view of the judgment of Apex Court in the case of **CCE, Trichy vs. M/s Rukmani Pakkwell Traders** reported in **2004 (165) E.L.T. 981 (S.C.)**, the provisions of an exemption Notification have to be strictly construed and exemption notification must be interpreted only on its own wordings. According to him, when the industrial areas mentioned in Annexure II to the notification also stand defined by mentioning the Khasra numbers covered by those industrial areas, when the Khasra number of a unit located in a particular Industrial area mentioned in Annexure – II is not mentioned against that Industrial area, the unit cannot be treated as covered by that industrial area. He, therefore, pleaded that the impugned order is not correct.

4. While none appeared for M/s B.R. Agrotech Ltd. and M/s Chenab Agrochem Ltd., Shri B.L. Narasimhan, Advocate,

appeared for M/s Bharat Udyog and M/s Natural Herbal Products and Shri S.K. Malhotra, C.A., appeared for M/s Cardinal Chemicals Pvt. Ltd. The learned Counsels for the respondents, defended the impugned order by reiterating the findings of the Commissioner (Appeals) and emphasised that the exemption Notification is available to the goods covered by the Notification, which are manufactured and cleared by the units located in the industrial areas, specified in Annexure II to the Notification, that the respondent's units are located in those industrial areas, that just because the Khasra number of a unit located in a particular industrial area mentioned in Annexure – II is not mentioned against that industrial area in the Annexure II, the benefit of the exemption cannot be denied and that in view of this, there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records. On findings in respect of different appears are as under :-

6. **Appeal No. E/1944 – 1947/2009**.

6.1 So far as the Revenue's appeals, where M/s Cardinal Chemicals Pvt. Ltd., the respondents, are concerned, the respondent's unit is located in SICOP industrial area, Kathua and the area where the unit is located falls under Khasra No. 125/54/1, 55/1 and 71/2 of Village Chak Khuni. In terms of certificate of Naib Tehsildar, Kathua Circle, the respondent's unit is located at Khasra No. 125/54/1, 55/1 and 71/2 situated at

Village Chak Khuni which is within SICOP industrial area. On going through, the exemption notification, we find that SICOP industrial areas, is mentioned against Sl. No. (2) (II) (C) (1) of the Annexure II to the Notification and against SICOP industrial Estate, the Khasra No. 125/54/1, 55/1 and 71/2 are mentioned. The Khasra No. 125/54/1, 55/1 and 71/2 are printed in this order only and the only mistake is that there is no comma, between Khasra No. 125/54/1, and 55/1, which obviously is a typographical mistake. As mentioned above, the Naib Tehsildar in his certificate has clearly stated that the unit of M/s Cardinal Chemicals Pvt. Ltd. is situated in Khasra No. 125/54/1, 55/1 and 71/2 situated at Village Chak Khuni, which is within SICOP industrial area. In view of this, we fail to understand as to on what basis the department contends that the Khasra number in which the unit is located are not specified against the industrial area specified in the Annexure II to the notification. Moreover the exemption under this notification is available in respect of the eligible goods cleared by the units located in the industrial areas, growth centres etc. specified in this notification and it is not the condition of the Notification that the unit must also be located in the Khasra numbers mentioned against the each industrial area. In view of this, so far as the appeals where M/s Cardinal Chemicals Pvt. Ltd., are the respondent are concerned, we do not find any infirmity in the impugned order passed by the Commissioner (Appeals).

7. **Appeal No. 1942-1943/2009**.

7.1 As regards the two appeals where M/s Natural Herbal Products are the respondent, their unit is located at Plot No. 8B, SICOP Industrial Area, Chak Ram Singh. SICOP Industrial Estate is specified against Sl. No. (2) (II) (C) (1) of the Annexure II to the exemption Notification. The department's objection is that while the industrial area in which the unit is located is specified in the Notification, the Khasra No. 126/68/37-min, in which the unit is located is not specified against industrial Estate SICOP, but is specified against industrial Estate SIDCO, Kathua. The Naib Tehsildar's certificate mentions that this unit is located in SICOP Industrial Estate, in Khasra No. 126/68/37 min of Village Chak Ram Singh. However, we find that the Khasra No. 126/68/37-min is mentioned against Industrial Estate SIDCO, not against Industrial Estate SICOP. According to the respondent, the Industrial Estates, Industrial Estate SICOP and SIDCO of Kathua are adjoining industrial Estates separated by a road and the part of the Khasra No. 126/68/37-min is in the SICOP Industrial Estate. We are of the view since this unit is located in industrial Estate SICOP which is specified in the Annexure II to the notification against Sl. No. (2) (II) (C) (1), just because the Khasra No. in which the unit is located – No. 126/68/37-min is not specified against SICOP industrial Estate but is specified under SIDCO industrial Estate, the benefit of exemption cannot be denied, as the benefit of the notification is available in respect of the eligible goods manufactured and cleared by the units located in the industrial Estates/industrial area as specified in

Annexure II to the notification and this condition stands satisfied by the respondent. There may be mistake in mentioning the Khasra numbers covered by a particular industrial area and, therefore, just because the Khasra number of a unit is not mentioned against a particular industrial area, the benefit of the exemption cannot be denied to a unit when the unit, without any doubt, is located in the specified industrial area. In view of this, so far as, these two appeals are concerned, we do not find in the infirmity in the impugned order.

8. **Appeal No. E/1938 and 1941/2009**.

8.1 Coming to the two appeals where M/s B.R. Agro Tech is the respondent, the unit of the respondent is located SIDCO Estate Kathua and as per the certificate dated 14/9/05 of Naib Tehsildar, Kathua the unit is located under Khasra No. 64/51/25 and 26 of Village Chak Khuni, which is under the industrial Estate of Kathua. The department's objection is that while the respondent's unit is located in SIDCO industrial Estate of Kathua, specified in Annexure II against Sl. No. (2) (II) (C) (2), the Khasra Nos. 64/51/25 and 64/51/26 are not mentioned in the Annexure II to the notification against industrial Estate SIDCO. However, it is seen that the Khasra No. "64/51/25" and "64/51/25", are mentioned against Sl. No. (2) (II) (C) (1) pertaining to SICOP Industrial Estate and there is the repetition of the "No. 64/51/25" which obviously is a typographical mistake and the same has to be read as "64/51/25" and "64/51/26". In our view, since the unit is located in SIDCO industrial area which is specified against Sl. No. (2) (II) (C) (2) of Annexure II to the notification, just because the Khasra numbers in which the unit is located are not specified against industrial Estate SIDCO, but are specified against industrial Estates SICOP against Sl. No. (2) (II) (C) (1) benefit, of the exemption cannot be denied, as the notification nowhere says that for being eligible for exemption the unit must not only be located in the industrial area specified in Annexure II to the notification, but its Khasra number must also be specified against that industrial Estate. Moreover, there may be a mistake in mentioning the Khasra numbers covered by a particular industrial Estate and just because a Khasra number in which the unit is located is mentioned against a wrong industrial Estate, the exemption notification cannot be denied so far as the industrial Estate in which unit is located is specified in the notification. In view of this, we do not find any infirmity in the impugned order with regard to these two units.

9. **Appeal No. E/1939/2009**.

9.1 As regards, Revenue's appeal where M/s Chenab Agrochem Ltd. is the respondent, the unit of the respondent is located in SICOP industrial Estate, Kathua and as per certificate dated 24/2/04 of Naib Tehsildar, Kathua, the unit is located under Khasra No. 66/37 and 126/68/37-min. The department's objection is that while the unit is located in SICOP industrial Estate, Kathua, the Khasra No. 66/37 and 126/68/37-min in which the unit is located, are not mentioned against SICOP industrial Estate. However, we find that these two Khasra numbers are mentioned against the neighbouring SIDCO industrial Estate against Sl. No. (2) (II) (C) (2) and obviously there is a mistake in mentioning the Khasra numbers covered by the SICOP and SIDCO industrial Estates of Kathua. As discussed above, for extending the benefit of this notification, what is relevant is that is the goods manufactured by the unit must be covered by the notification, that is the goods must be other than those mentioned in Annexure I to the notification, and the goods should have been manufactured and cleared by the unit located in the industrial areas, industrial Estates, industrial growth centres, industrial infrastructure development centres etc., specified in Annexure II to the notification. Though in the Annexure II to the notification against the industrial Estates, industrial growth centres etc. Khasra numbers covered by the Industrial area are also mentioned, it is not the condition of the notification that the Khasra number in which the unit is located must also be mentioned against the specified industrial area in which the unit is located as there can be mistake in specifying Khasra numbers covered by a particular industrial Estate. In this case, since the industrial unit is admittedly situated in SICOP industrial Estate and SICOP industrial Estate of Kathua is specified against Sl. No. (2) (II) (C) (1) of Annexure II to the notification, in our view the exemption notification cannot be denied. Moreover since the units' Khasra numbers, are specified against SIDCO Industrial Estate, and, if for this reason, the unit is treated as located in SIDCO Industrial Estate, even then the exemption cannot be denied. Thus, there is not infirmity in the impugned order with regard to these two units.

10. **Appeal No. E/1940/2009**.

10.1 As regards, the Revenue's appeal where M/s Bharat Udyog is the respondent, their unit is located in SICOP industrial area, Kathua and as per the certificate dated 7/9/07 of Naib Tehsildar, Kathua, the unit is located in Khasra No. 126/68/37-min in Village Chak Ram Singh, which falls within the limits of SICOP industrial Estates. This certificate also mentions that some part of the Khasra No. 126/68/37-min also falls within the limit of SIDCO industrial area. The department's objection is that while the respondent's unit address is of SICOP industrial Estate, Kathua, the Khasra No. 126/68/37-min is not mentioned against this industrial Estate against Sl. No. (2) (II) (C) (1) of Annexure II. However, as mentioned above, this Khasra number is clearly mentioned against Sl. No. (2) (II) (C) (2) pertaining to industrial Estate SIDCO, Kathua and as per the Naib Tehsildar certificate part of the Khasra No. 126/68/37-min also falls under SIDCO industrial Estate. In view of this, the Revenue's plea that the respondent unit is not eligible for exemption is incorrect and, as such, there is no infirmity in the impugned order with regard to this unit.

11. In view of the above discussion, we do not find any merit in these appeals. The same are dismissed. The stay applications also stand dismissed.

(Order pronounced in open court on 25/07/2012.)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK