# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

**COURT-I**

**Date of hearing/decision: 11.01.2017**

**Appeal No. E/2137, 2138/2010-EX[DB]**

[Arising out of the Order-in-Appeal No. 020/2009 dated 26.02.2010 passed by the Commissioner of Central Excise, New Delhi]

M/s. Stericat Gutstring Pvt. Ltd.
Shri Vikram Kapahi, MD … Appellant

Vs.

C.C.E. Delhi-II ... Respondent

Appearance:

Present Shri Rajesh Kr. Jain, Advocate for the appellant
Present Shri R.K. Manjhi, DR for the respondent

**Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
**Hon'ble Mr. V. Padmanabhan, Technical Member**

**FINAL ORDER NO. 50352-50353/2017**

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against order in original no. 20/2009 dated 26.02.2010.

2. The brief facts of the case are that the appellant company has been continuously engaged in the manufacture of atraumatic needled sutures, as well as sterile and non-sterile sutures since 1985. They took central excise license in July 1995. Before that, they were raided two times by the Central Excise Department, and were subsequently subjected to adjudications too. After their registration, they filed declarations, classification-lists, RTI2s, ERIs and ER3s regularly and continuously bonafidely taking the benefit of various duty-exemptions (SS(, 6/2002-CE and 6/2006-CE) from the Central Excise Department even without their claiming any utilization of their atraumatic needled sutures in any cardiac or ophthalmic surgery. However, during the

scrutiny of their ER3s for 3 quarters ending December, 2007, the Department doubted their entitlement to the benefit of central excise notification no. 6/2006-CE in respect of their atraumatic needled sutures and therefore launched an investigation preceded by seizures worth Rs.2,14,98,055/- during which it obtained reports from 5 different Surgeons / Hospital as to their actual utilization of appellants' all varieties of atraumatic needled sutures in ophthalmic and cardiac surgeries. While these reports accepted that nearly 80% of these needled sutures were being used by them for their cardiac / ophthalmic surgeries, these reports did not say anything regarding the others (though may be so usable.) In fact, the department in its O-in-O dated 24.10.1997 itself confirmed the utilization of the appellant's atraumatic stutures in ophthalmic and cardiac surgeries.

3. Resultantly, a demand-SCN was issued invoking the extended period demanding the duty of Rs.1,37,38,404/- on atraumatic sutures and of Rs.11,31,031/- on non-atraumatic sutures on the basis of their filed returns claiming the benefit of the exemption thereunder. Though the duty of Rs.11,31,031/- was deposited along with interest well before the SCN, the demand SCN was challenged by the appellant and so also the proposed invocation of extended period of the limitation as well as the proposal of imposition of penalty and confiscation of the seized goods.

4. The CCE did not accede to the appellants' defence, and therefore, confirmed the demand using the extended period, and also ordered imposition of penalties, demand of interest as well as confiscation of seized goods.

5. Being aggrieved, the appellant has filed the present appeal.

6. With this background we have heard Shri Rajesh Kr. Jain, Advocate for the appellant and Shri R.K. Manjhi, DR for the respondent.

7. After hearing both the sides, we find that an identical issue has come up before the Tribunal in the case of ***Sutures India Pvt. Ltd. Vs. CCE Bangalore 2009 (245) ELT 596 (Tri-Bang.)*** where the same issue was involved.

8. Against the above mentioned order, the Department has filed the appeal before the Hon'ble Supreme Court which was dismissed reported as ***2010 (255) ELT A85.***

9. In the light of the above legal settled position, we find no reasons to sustain the impugned order. Same is hereby set aside. Appeal is allowed with consequential relief.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu