IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. E/252/2010-EX[DB]

[Arising out of the common Order-In-Original No. 112/2008/2009 Dated 22.01.2009 passed by Assistant Commissioner, Central Excise Division, Bhiwadi.]

Sanjay Asbestos Cement Pipes Pvt. Ltd. …Appellant

Vs.

C.C.E. Jaipur I …Respondent

Appearance:
Sh. R. Prashad, Ld. Advocate for the appellant
Sh. G.R. Singh, Ld. AR for the respondent

CORAM:
Hon'ble Justice Mr. Dr. Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing. 02.01.2017
Date of decision. 31.01.2017

Final Order No.50546/2017

Per Ashok K. Arya:

1. The appellant M/s Sanjay Asbestos Cement Pipes Pvt. Ltd. is in appeal against the Order-in-Appeal dated 13.11.2009 passed by the Commissioner (Appeals) whereunder the Order-in-Original No. 112/2008/2009 dated 22.01.2009 passed by the Assistant Commissioner, Central Excise Division, Bhiwadi has been sustained. The Order-in-Original dated 22.01.2009 confirms the recovery of duty of Rs. 2,67,211/- (Rs. Two Lakh Sixty Seven Thousand Two Hundred Eleven only) alongwith interest and also imposes penalty on the appellant manufacturer, M/s Sanjay Asbestos Cement Pipes Pvt. Ltd.

2. The appellant has been represented by the Ld. Advocate, Shri R. Prasad and the Revenue has been represented by the Ld. AR, Shri G.R. Singh.

3. Briefly the facts are that the Revenue did not allow benefit of Notification No. 5/2006 CE dated 01.03.2006 for the subject goods, where the appellant had crossed the clearance value of Rs. One crore on 04/01/2007 for the clearance of cement pressure pipes saying that the appellant did not submit the Intimation in form D-3 in respect of Fly Ash received in the factory on 18.03.2007 as required by the Trade Notice No. 40/97-CE (24-Misc.) dated 16.05.1997 issued by Commissioner, CE Jaipur and the condition prescribed under Notification No. 5/2006 C.E. dated 01.03.2006 had not been fulfilled.

3.1 The appellant *inter alia* contends that they manufactured cement pressures pipes with the use of cement and Fly Ash, where Fly Ash is more than 25% by weight. During the earlier period, the appellant was within the full exemption limit of SSI exemption Notification No. 8/2003 CE dated 01.03.2006, and for the later period the appellant is entitled to the benefit of concessional rate of duty of 8%, when their products contain not less than 25% by weight of Fly Ash.

3.1.1 The appellant submits that non-intimation in the form D-3 in respect of Fly Ash received in the factory is only a procedural requirement and not relevant for claiming concessional rate of duty to

Asbestos Cement Pressure Pipes, their product, containing no less than 25% by weight of Fly Ash.

3.1.2 The appellant also pleads that they maintained the records of receipt and use of Fly Ash and the monthly returns were filed properly and no discrepancies were found by the department; the goods were cleared on excise invoices. The appellant fails to understand which particular clause of Sub-Rule (1) of Rule 25 of C.E. Rules 2002 has been contravened with intent to evade duty for which penalty equal to duty demand has been imposed.

4. The Ld. AR reiterates the findings given in the impugned order.

5. After careful consideration of the facts on record and the submissions of both the sides, it appears that the appellant manufacturer is entitled to the benefit of the Notification No. 5/2006 CE (supra) where the product namely Asbestos Cement Pressure Pipe manufactured by the appellant is entitled to be cleared on the concessional rate of duty of 8%.

5.1 It is also on record that Revenue has superseded their earlier Central Excise Rules 1944 and Central Excise Rules 2001 by Central Excise Rules 2002. In Central Excise Rules, 2002, there is no requirement to submit D-3 intimation and furnishing of monthly returns as was earlier specified in Trade Notice No. 40/97-CE dated 16.05.1997. Thus, the Trade Notice No. 40/97 dated 16.05.1997 is not consistent with the provisions of new Central Excise Rules, 2002. We are of the considered view that substantial benefit available in the Central Excise law cannot be denied, when there has been mere omission of following procedural requirements by the assessee. Considering the totality of the facts and circumstances discussed above the appellant is entitled to the benefit of Notification No. 5/2006 CE dated 01.03.2006 (supra) and the product will be chargeable to concessional rate of duty at the rate of 8% in terms of the said notification.

5.2 In the result, the impugned order is set aside and the appeal is allowed with consequential benefit to the appellant.

[Pronounced in open Court on 31.01.2017]

(Justice (Dr.) Satish Chandra)
President

(Ashok K. Arya)
Member (Technical)

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