CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 30.01.2017

Excise Appeal No. 55398 of 2013
(Arising out of order in appeal No. 206/BPL/2012 dated 08.10.2012 passed by the Commissioner (Appeals), Central Excise, Bhopal).

CCE&ST, Bhopal Appellant

Vs.

M/s Dwarka Insulation & Conductors (P) Ltd. Respondent

Appearance:

Shri R. K. Manjhi, AR for the appellant
Sh. Sanjay Tiwari, C.A. for the respondent-assessee

Coram:

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

Final Order No.50567/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed by the appellant against the order-in-appeal No. 206/BPL/2012 dated 08.10.2012 passed by the Commissioner (Appeals), Central Excise, Bhopal.

2**.** The brief facts of the case are that during the period under consideration the appellant was in manufacturing of double paper covered aluminium wire falling under sub-heading No. 85446040 of the first schedule of the Central Excise Tariff Act, 1985. The appellant was eligible for SSI exemption during 2007-2008 and made a declaration before the authority as on 06.04.2007 to avail the benefit of SSI exemption for payment of Central Excise duty in terms of notification No. 08/2003-CE dated 01.03.2003 and filed the ER-I return declaring clearances nil rate of duty. However, during the period under consideration by mistake on the invoices, the excise duty were charged. When the mistake was realised the same was reversed. Only for this reason, the Commissioner in order-in-original has denied the SSI exemption. But the Commissioner (Appeals) has allowed the same by mentioning that this is bonafide mistake entry pertaining to duty was reversed. No benefit was taken by the appellant.

3. After hearing rival submissions, it appears that the identical issue was decided in favour of the appellant in the case of ***Salvi Chemicals Industries vs. CCE on 07.01.2005 – 2005 (182) ELT 170 –Tri. Mumbai*** where it was observed -

> *"that the payment of duty on one of the product by mistake, cannot be equalised to options as to invoke the said paragraph against assessee. The appellant having filed a classification list claiming the benefit of notification No. 1/93 in respect of both the products, it can be safely concluded that the assessee opted for the exemption benefit and the payment at normal rate for a limited period in respect of one of the product was an error on the part of the appellant and not their option. In view of this, we find that the order of the original adjudicating authority is just and proper and requires to be restored. Accordingly we set aside the impugned order of the Commissioner (Appeals) and restore the order of the original adjudicating authority.*
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> *5. The appeal is thus allowed with consequential relief to the appellant".*

4. By following the earlier order (supra), we find no reason to interfere with the impugned order passed by the Commissioner (Appeals). The same is hereby sustained

5. In the result, appeal filed by the department is dismissed.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant