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

Excise Appeal No. E/2480/2012-[DB]
[Arising out of Order-In-Appeal No. 104-CE-MRT-II-2012 dated 30.04.2012 passed by CCE Meerut-II]

Excise Appeal No. E/60507/2013-[DB]
[Arising out of Order-In-Appeal No. 119-CE-APPEAL-MRT-II-2013 dated 30.08.2013 passed by CCE Meerut-II]

Excise Appeal No. E/50270-50271/2015-[DB]
[Arising out of Order-In-Appeal No. MRT-EXCUS-002-APP-39-40-2014-15 dated 14.08.2014 passed by CCE Meerut-II]

Excise Appeal No. E/50473/2016-[DB]
[Arising out of Order-In-Appeal No. HPU-EXCUS-000-APPEALS-I-420-15-16HPU dated 23.12.2015 passed by CCE Meerut-I]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

M/s. Vega Auto Accessories Pvt. Ltd. ...Appellant
M/s. Vega Auto Accessories Pvt. Ltd.
M/s. Vega Auto Accessories Pvt. Ltd.
M/s. Vega Auto Accessories Pvt. Ltd.
M/s. VEGA AUTO ACCESSORIES PVT. LTD.
Vs.
C.C.E. & S.T. Meerut-II …Respondent
C.C.E. & S.T. Meerut-II
C.C.E. & S.T. Meerut-II
C.C.E. & S.T. Meerut-II
C.C.E. & S.T. Meerut-I

Appearance:
Mr. R.M. Saxena (Advocate) for the Appellant
Mr. H.C. Saini, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.06.02.2017

Final Order No. 50711-50715/2017

Per S.K. Mohanty:

Brief facts of the case are that the appellant is engaged in manufacture of helmets falling under Chapter 65 of the Central Excise Tariff Act, 1985. During the disputed period, the appellant had filed the application before the Jurisdictional Central Excise authorities opting for availing the benefit of Notification No. 50/2003-CE dated 10.06.2003. The said notification provided for exemption from excise duty for the industrial unit set up in specified areas and commenced commercial production not later than 31.03.2010. Pursuant to the application filed by the appellant, the Department inquired into the matter and found that no capital goods were installed in the appellant's unit except one compressor. Based on the verification, the Jurisdictional Superintendent submitted his report to the Assistant Commissioner of Central Excise Division, Rampur on 20.04.2010, stating that manufacturing activities by the appellant is not possible, and accordingly, recommended that the benefit of exemption contained in Notification dated 10.06.2003 is not admissible to the appellant. Thereafter, the department initiated Show Cause proceedings against the appellant for denying the benefit of exemption Notification dated 10.06.2003 and for demand of Central Excise duty and for imposition of penalty. The Show Cause Notices issued by the department were culminated in the adjudication orders, wherein Central Excise duty proposed for recovery in the SCNs were confirmed along with interest and penalties were imposed on the appellant.

2. The benefit claimed under Notification dated 10.06.2003 was denied to the appellant on the ground that the commercial

production was not started on or before 31.03.2010 as provided in condition 2(i) of the said Notification. On appeal against the adjudication orders, the Ld. Commissioner (Appeals) has upheld the adjudged demand. Hence, the present appeal is before the Tribunal.

3. The Ld. Advocate appearing for the appellant submits that during the disputed period, the appellant had manufactured helmets out of semi finished shells procured from the market and subsequently, it had procured injection moulding machine in 2011. He also submits that the department in their letter dated 17.12.2012 addressed to the Registrar of CESTAT have confirmed that the party had purchased the semi finished goods i.e. raw shells as input for manufacture of helmets. He also submits that the commercial production was commenced on 26.03.2010 and the department was duly intimated of such fact vide letter dated 26.03.2010. To substantiate the fact that the commercial production has started on 26.03.2010, the Ld. Advocate has referred to the invoices dated 27.03.2010 and 30.03.2010 issued by it for sale of the helmets and also the consignment note issued by the transporter for delivery of goods at the buyers' premises. He also referred to the VAT Return filed before the Jurisdictional Authorities showing the payment of appropriate VAT/ CST on sale of Helmets to the buyers before 30.03.2010. With regard to the doubt expressed by the department that certain capital goods were transported only in September, 2010, the Ld. Advocate has clarified that the movement of capital goods was in March, 2010 and the payment for such transportation was made by the

appellant through cheque which was debited in appellant's account in April 2010.

4. The Ld. Advocate also submits that the department did not follow the established procedure during the visit of the officers fpr verification of machines and premises of the appellant, inasmuch as no punchnama drawn and the statement recorded from manager was not given to the appellant.

5. On the other hand, the Ld. DR appearing for the Respondent reiterates the findings recorded in the impugned order.

6. Heard both the sides and perused the records.

7. The issue involved in these appeals for consideration by the Tribunal is as to whether the appellant has started its commercial production prior to 31.03.2010, in order to get the benefit in the Notification No. 50/2003 dated 10.06.2003. We find that the department in their letter dated 17.12.2012 addressed to the Registrar, CESTAT have admitted that the appellant had purchased semi finished goods i.e. Raw Shell and used the same in the manufacture of finished goods i.e. helmet. Such submission of the department corroborated the fact of issuance of invoice by the appellant showing payment of Central Excise Tax (CST) and also movement of goods from its factory to the buyers premises. The document submitted by the appellant proves the fact that the commercial production commenced in the factory of the appellant on 26.03.2010 and as such, the benefit contained in the Notification dated 10.06.2003 should be eligible to the appellant.

Further, we find that the department has not followed the establish procedures of preparation of punchnama, recording of such statement etc. before arriving at the conclusion that the appellant did not commence its commercial production before 31.03.2010. In fact the visit of the offices was much after 31.03.2010.

8. We find that during March, 2010 the appellant did not possess all the machinery to manufacture helmet from raw material (plastic) to finished goods (helmet). However, admittedly, they undertook manufacture of helmet from semi-finished shell procured by them. We have perused various photographs submitted by the appellant to explain the manual processes involved in making helmet from such shells. The said processes do not require elaborate / sophisticated machinery. The timely declaration of commencement of production and thereafter clearance of helmet before 31.03.2010 was intimated to the jurisdictional officers. The impugned order rejected the two clearances made by me appellant as forget documents. Such serious allegation was not elaborated with any shred of evidence. The sales of helmets are to specific parties and transport also has been evidenced. No verification has been carried out by Revenue on this aspect. We find that the impugned order was passed in a presumptive and summary manner without due analysis of all evidences. Details submitted by the appellant.

9. Thus, we are of the view that the department has not properly conducted the inquiry in order to arrive at the conclusion

that the appellant is not entitled for the exemption provided in Notification dated 16.03.2010. The evidences submitted by the appellant show the commencement of commercial production and VAT paid clearances of excisable goods by the unit prior to 31.03.2010.

10. Therefore, we do not find any merits in the impugned order and allow the appeals in favour of the appellant.

(Dictated and pronounced in open court)

(B. Ravichandran) Member(Technical)	(S. K. Mohanty) Member (Judicial)

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