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

Appeal No. E/1540/2010-EX[DB]

[Arising out of Order-in-Appeal No. 207-210/CE/MRT-I/2009 dated 29.01.2010, passed by the Commissioner of Central Excise, Meerut-I]

M/s Whale Stationary Products Ltd. ....Appellant

Vs.

C.C.E.,Meerut-I ....Respondent

Appearance:
Ms. Surabhi Sinha, Advocate for the Appellant
Sh. H.C. Saini, DR for the Respondent

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

Date of Hearing: 25.01.2017

Date of Pronouncement: 07.03.2017

FINAL ORDER NO. 52152 /2017-CU[DB]

Per V. Padmanabhan

The present appeal is directed against the Order-in-Appeal no. 207- 210 dated 20.09.2010 passed by the Commissioner

(Appeals), Meerut. Vide the impugned order, the Commissioner (Appeals) has upheld the demand of Excise duty amounting of Rs 11,60,322/- for the period February, 2006 to July, 2007 and payment of interests was also ordered. Aggrieved by the impugned order, the present appeal has been filed.

2. The facts in brief:

The appellants are manufacturer of Carbon paper & Stencil Paper falling under tariff heading 4816 and 4809 and is situated in Dehradun, Uttarakhand. On January 2004, the appellant informed the department that they have undertaken substantial expansion in their unit and are eligible for exemption under Notification 50/2003-CE dated 10.06.2003 for their product under tariff heading 4816 i.e. Carbon paper. Further, they also informed the department that they have stopped production of carbon paper falling under tariff sub heading 4809.10 having width exceeding 36 cms and intent to avail the exemption under the above mentioned notification. The said Notification excluded products under Tariff sub-heading 4809.10. The department entertained doubts regarding the appellant's eligibility for the said exemption on the ground that they have not undertaken substantial expansion and further they have been manufacturing carbon paper having width more than 36 cms., which is not covered by the said notification. Further, they also alleged that the Khasra no 164 H in Mohbewala Industrial Region has been deleted from Annexure-2 by amendment through notification 27/2005 dated 19.05.2005. Therefore, No benefit of area based exemption can be extended to the appellant. Proceedings were initiated against the appellant and the Original Authority disallowed the exemption under Notification No. 50/2003-CEI.; confirmed the demand of Rs 11,62,660/- with equal amount of penalty and imposed various penalties on the three Directors of the appellant's company. On appeal, the Commissioner (Appeals) in para 7.5 of the impugned order held that the appellant does not merit exemption solely on the ground that under the amended notification 27/2005 dated 19.05.2005 the Khasra number of the appellant has been deleted. For the other allegations, the Commissioner (Appeals) held in favour of the appellant. Consequently, the Commissioner (Appeals) held that the appellant was not eligible for exemption under Notification No. 50/2003. He further confirmed the duty as well as interest, subject to the adjustment of the amount of cenvat credit available on inputs or capital goods. However, he dropped the penalty on the appellant as well as its directors.

3. With the above background, we heard Ms. Surabhi Sinha, ld. Advocate for the appellant as well as Shri H.C. Saini, ld. DR for the respondent.

4. The following grounds are urged by the ld. Advocate on behalf of the appellant:

a. That for the earlier period on the issue of substantial expansion and manufacturing carbon paper having width more than 36 ems which is later cut into smaller size, the issue is settled by the Hon'ble Tribunal in the party's own case reported in 2016 (337) ELT 393 - Maj Gen Gurdev Singh, Director Vs. C.C.E., Meerut —I.

b. That in the present appeal the benefit has been denied to appellant solely on the ground that by notification no. 27/2005 dated 19.05.2005, khasra number 164-H has been deleted from Annexure II of the notification;

c. The appellant had availed exemption in 2004 under notification 50/2003 dated 10.06.2003 and had made changes in their factory by way of substantial expansion to avail the benefit of the notification. The extract of the notification is produced below :-

The exemption contained in this notification shall apply only to the following kinds of units, namely . -

(a) new industrial units which have commenced their commercial production on or after the 7th day of January, 2003;

(b) industrial units existing before the 7th day of January, 2003, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty Jive per cent, on or after the 7th day of January, 2003.

d. The exemption contained in this notification shall apply to the said units for a period not exceeding ten years from the date of publication of this notification in the Official Gazette or from the date of commencement of commercial production, whichever is later. Therefore once the condition in para 2 (b) is fulfilled within the stipulated time the appellant is entitled to the benefit of exemption for 10 years. Further by Notification No. 27/2005 dated 19.05.005, the khasra number was deleted from the notification therefore the department concluded that benefit of the notification would not be available to the appellant.

e. The appellant wish to submit that the amendment in the notification is prospective in nature and does not apply to the units which have already undertaken substantial expansion before 19.05.2005. The plain reading of the notification will show that this restriction is for new industries being set up in the Mohbewala Industrial region. The said notification has no where rescinded the benefit to the existing units in that region.

f. That the appellant was made a promise by the government and acting on that promise the appellant altered their position (wherein they undertook expansion); under the principle of "Promissory Estoppel" the department is obligated to perform in accordance with the promise already made. The only reason to rescind such promise would be in larger public interest which is not the case of the department. The same has been held by various High Courts in the following judgments

- 2016 (342) ELT 65 (Tripura) Dharampal Premchand ltd. Vs. Union of India.
- 2013 (290) ELT 33 (Sikkim) Unicorn Industries Vs Union of India.

- 2011 (269) ELT 194 (J & K) Reckitt Benckiser Vs. Union of India).

5. The appellant's unit is situated in the state of Uttrakhand. The dispute is with reference to eligibility for exemption under Notification No. 50/2003-CE dated 10.06.2003. The notification grants area based exemption for units set up in the designated backward areas. The benefit is also available in the case of substantial expansion undertaken during the relevant period category. The claim of the appellant is under the latter Notification No. 50/2003-CE was amended vide Notification No. 27/2005 dated 19.05.2005 to the effect that Khasra no. 164H in Mohebwala Industrial Region was deleted from Annexure II. Since, the appellant's unit is situated within the said Khasra; Revenue has taken the view that the appellant will not be eligible for the benefit of the area based exemption. Accordingly, demand of excise duty stands confirmed for the period February, 2006 to July, 2007.

6. The appellant has argued that the amendment carried out in the notification should not be made applicable to those units, which have already undertaken substantial expansion prior to 19.05.2005. They have sought to buttress their claim with the legal argument of "promissory estoppels".

7. The area based exemption benefit is extended to units situated in designated backward areas listed out in the relevant notification but the area in which the appellants unit is situated has been deleted from the relevant notification, the appellant will ceaze

to enjoy the benefit of the notification from the date of such amendment. Ld. Commissioner (Appeals) in the impugned order has also fairly allowed the benefit of cenvat credit available on inputs and capital goods before arriving at the final demand. The appellant has challenged the duty demand under the doctrine of promissory estoppel. It is now a settled law that doctrine of promissory estoppel is a rule of equity and for the enforcement of this rule, apart from equitable considerations, the public interest, public policy, sovereign and statutory exercise of authority by the State and its functionaries are other relevant factors. The law, as evolved over a period of time, recognizes the enforceability of promissory estoppels where the promisee or assurance is extended unequivocally and the promisor has altered his/its position to the detriment of the promisee acting on such representation or promise. It is equally settled law that the extended promise or its basis is exercise of sovereign or statutory powers or on account of any valid public policy. However, any relief under such Rule of equity can be enforced only in the hands of Hon’ble High Courts and Supreme Courts. This Tribunal, which is a creature of the statue, cannot arrogate to itself such powers. The Tribunal is required to decide tax disputes on the basis of law and the relevant Notifications issued by the Government. It is clear on fact that the area where the appellant’s unit is located is no more covered under the relevant notification. Consequently, the demand raised in the impugned order is fully justified and hence upheld.

8. In view of the above discussions, the impugned order is upheld and the appeal is dismissed.

[Pronounced in the open court on 07.03.2017]

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member(Technical)

Ritu S.