IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:16.02.2017
Date of Decision:08.03.2017

Excise Appeal No.57484/2013

[Arising out of Order-in-Appeal No.LTU/Appl/19/2013 dated 28.02.2013 passed by the Commissioner (Appeals), Central Excise & Service Tax, New Delhi]

M/s.Havells India Limited — Appellants

Vs.

CCE, Delhi — Respondent

Appearance:
Rep. by Shri J.P. Kaushik, Advocate for the appellant.
Rep. by Shri R.K. Manjhi, DR for the respondent.

Coram: Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.52308/2017

Per B. Ravichandran:

The appeal is against order dated 28.02.2013 of Commissioner (Appeals), Delhi. The appellants are engaged in the manufacture of PVC insulated wires and cables, power cables, etc liable to central excise duty. The dispute in the present appeal relates to their entitlement to exemption from duty in respect of wires and cables cleared by them in terms of Notification No.10/97-CE dated 1.3.1997 and 3/2004 dated 8.1.2004. The exemption claim was denied by the Original Authority confirming central excise duty of Rs.19,13,666/-. A penalty of equivalent amount was also imposed on the appellant. On appeal, the original order was held.

2. Ld. Counsel for the appellant submitted that they are eligible for both the notifications and the impugned order wrongly denied the exemptions to them. Regarding notification no.10/97-CE, he submitted that the appellants cleared wires

and cables to M/s.Meritor HVS (India) Ltd., Mysore. It is a recognized R & D Unit by the Government of India. As such, they are eligible for exemption in terms of Sl.No.2 of the Table attached to the said notification. The denial of exemption by the impugned order stating that the consignee has not been certified as a institution not engaged in any commercial activity and the said goods are required for research purpose only. Ld. Counsel submitted that the consignee is having R& D facility as certified by the Government of India and accordingly, the exemption for the impugned wires and cables should be allowed.

3. Regarding exemption notification no.3/2004-CE, he submitted that they have procured the required certificate issued by the District Magistrate, Nalganda (AP) to the effect that the cables are required for setting up of water supply plant/project as assessed by the Superintendent Engineer with reference to Srisailam Reservoir. The denial of exemption, on the ground that the cables were in running length, is not justifiable.

4. Ld. Counsel also contested the imposition of equal amount of penalty under Section 11 AC. Further, it is submitted that at the time of clearance of these cables without payment of duty, the appellants reversed a credit of Rs.11,96,041/- which should have been considered while arriving at the duty payable by the appellant.

5. Ld. AR submitted that the conditions mentioned in these notifications are very clear and the findings recorded in the impugned order cannot be contested.

6. We have heard both the sides and perused the appeal records.

7. We consider first the appellant's eligibility for exemption under notification no.10/97-CE. The said notification allows exemption to scientific and technical

instrument, apparatus, equipments including computers, accessories and spare parts thereof and consumables supplied to non-commercial research institutions. The conditions specified are that the institution is registered with Government of India and an officer not below the rank of Dy. Secretary to the Government of India certifies, in each case, that the institution is not engaged in any commercial activities and that the said goods are required for research purposes only. The goods are covered by pass book issued by the Department and there is a monitory ceiling in respect of supplies to each institution. We note that except for recognition of in-house R &D Unit of the consignee, there is nothing on record that the required certificate from the competent officer of the Department of Scientific and Industrial Research, Government of India, has been obtained for such supplies of duty free excisable items. We find that this is an essential condition which has not been fulfilled by the appellant and as such, they are not eligible for exemption under the said notification.

8. Regarding the appellant’s eligibility for notification no.3/04-CE, we note that the said notification exempts all items of machinery including instruments, apparatus and appliances, auxiliary equipments and their components for setting up water supply plants. The appellants produced certificate of the District Magistrate in Andhra Pradesh. The appellant’s name is specifically mentioned as a supplier of aluminium armoured cable. The quantity mentioned is in running lengths. We find that the impugned order denied the exemption only on the ground that wires and cables in running lengths cleared by the appellant as “stand alone” goods are identifiable as general purpose goods rather than apparatus specific goods. He further relied on the decision of the Hon’ble Supreme Court in **Uniflex Cables Ltd.** We note that the ld. Commissioner (Appeals) fell in error in relying on the

said decision. The issue before the Hon'ble Supreme Court is application of exemption under notification no.205/88-CE. The said notification granted exemption in respect of the manufacture of wind mill, parts of the wind mills and any specially designed devices, which run on wind mill. The appellants therein supplied cables to the manufacturers of wind mill. It was held that the insulated cables cannot be classified as parts of wind mills. In the present case, we note that the exemption is in respect of all items of machinery, instruments, components, parts required for setting up of water supply plants. We are not dealing with a specific machinery or its components. All types of machinery including auxiliary equipments required for setting up of water supply plants are eligible for exemption. In setting up of water supply plants, it is apparent that large number of items, which have separate identity and are of general nature will be required. On integration in the project, they will become part of water supply plant. The requirement of insulated cables for the water supply project has been certified by the competent authority. The same is not in dispute. In **KEI Industries Ltd. – 2016 (338) ELT 618 (Tribunal)**, the Tribunal held that such wires and cables supplied to sub-contractors in connection with setting up of water supply plant is eligible for exemption under notification no.3/04-CE. It is apparent that notification no.3/04-CE applies to all kinds of excisable products in a broad category as listed in the notification. There is no tariff classification nor there is any specific machinery or instrument or appliances identified by name. In such situation, we find denial of exemption to the appellant is not justifiable.

9. Regarding imposition of penalty, we note that there is no justification for imposing equal amount of penalty on the appellant. The show cause notice did not allege or invoke extended period of demand and there is no charge regarding

specific violation of various provisions of law attracting such equal penalty. The Original Authority imposed such penalty on the ground that there is no discretion while imposing penalty under Section 11 AC. We note that the show cause notice itself did not invoke the proviso of Clause of Section 11A (1), neither any reason has been alleged in the notice for invoking Section 11 AC. As such, we find that there is no justification to impose penalty of equivalent amount on the appellant, in the facts of the present case. The penalty imposed is accordingly set aside. The central excise duty liability payable by the appellant due to non-availability of exemption notification no.10/97-CE shall be arrived after adjusting the amount already paid at the time of clearance of wires and cables claiming such exemption, in terms of Rule 6 of Cenvat Credit Rules, 2004.

9. The appeal is disposed of in the above terms.

[Order pronounced on 8.3.2017.]

(Archana Wadhwa)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.