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

Date of hearing/decision: 09.03.2017

Excise Appeal No. 56562 of 2013

(Arising out of order-in-appeal No. 247/BPL/2012 dated 17.12.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal).

Grey Iron Foundry Appellants

Vs.

CCE, Bhopal Respondent

Appearance:

Sh. Akshay Chandra, Advocate for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

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

Final Order No. 52311/2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against the order-in-appeal No. 247/BPL/2012 dated 17.12.2012 passed by the Commissioner (Appeals), Customs & Central Excise, Bhopal.

2. The appellant is a Public Sector Undertaking. During the period under consideration (from July 2005 to December, 2010), the appellant was supplying excisable goods i.e. cast articles of iron and ammunition boxes to the defence and other units of Indian Ordinance Factory without payment of duty as per Notification No. 62/95-CE dated 16.03.1995. The appellant is also selling their goods i.e. cast article of iron and ammunition boxes alongwith scrap

generated to the Public Sector Units and private persons. The appellant has claimed that goods supplied to the defence is exempted from the duty as per the Notification No. 62/95-CE dated 16.03.1995, so, their turnover come below the prescribed limit for availing SSI exemption. But the said exemption was not provided by the lower authority who observed that assessee is not liable to be excluded for the purpose of computing the value of clearances. So, SSI benefit was denied to the appellant. Being aggrieved, the present appeal has been filed by the appellant.

3. With this background, we heard Shri Akshay Chandra, ld. Advocate for the appellant and Shri H. C. Saini, AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that in the Notification No. 8/2003-CE dated 01.03.2003 it is mentioned that-

> *"clearances, which are exempted from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason*"

From the above, it appears that the exemption provided under another notification is also entitled to exclude the saleable value. On the other hand, the appellate authority has observed that no exclusion of Notification No. 62/95-CE is available to the appellant for computing the aggregate value of clearances of 4 crores, but no reason was given. Further, Ld. Counsel submits that in computing the turnover aggregate value has not been reflected correctly. There are some arithmetical mistake.

5. By considering the submissions and totality of facts and circumstances of the case, we deem it fit to set-aside the impugned order and remand the matter

to the original authority for denovo assessment, in the light of above discussion, but by providing reasonable opportunity of hearing to the assessee to present their case with liberty to file additional evidence, if necessary, as per law.

6. In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant