APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO II

Appeal No.E/2043/2007-EX(DB) & E/2349/2007-EX(DB)

[Arising out of the common Order-in-original No.28/Commr/Mrt-I/2007 dated 30.04.2007 passed by Commissioner Central Excise, Meerut-I)

Controls & Switchgears Co. Ltd. **… Appellant**

Vs

C.C.E. Meerut & Vice-versa **...Respondent**

Appearance:

Sh PK Sahu, Advocate for the Appellant
Sh HC Saini, DR for the Respondent

<u>CORAM:</u>

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

Date of Hearing 15.03.2017
Dt. of pronouncement:13.04.2017

FINAL ORDER NO.52890-52891/2017

<u>Per Ashok K. Arya</u>

1. M/s Controls & Switchgears Co. Ltd. is in Appeal (No. E/2043/2007) against Order-in-Original No.28/2007 dated 30.04.2007 passed by Commissioner, Central Excise, Meerut-I whereunder exemption of notification No.50/2003-CE dated 10.06.2003 has been denied to the appellant. The period involved is from 26.10.2005 to 22.12.2005.

1.1 The Revenue has also filed cross appeal (No.E/2349/2007) against the same Order-in-Original stating that the Commissioner wrongly allowed CENVAT credit to the assessee M/s Controls and Switch Gears Co. Ltd.

2. The brief facts are:

i) that the assessee M/s Controls & Switch Gears Co. Ltd started a new manufacturing unit in Hardwar (Uttaranchal) to manufacture ring main unit (Ch.85371020), Bus tranking & parts (Ch.85446090), electrical control panels (Ch.85371020) & bus ducts & accessories (Ch.85446090) falling under the Central Excise Tariff Act, 1985.

ii) There is no dispute that the appellant is entitled to the benefit of exemption notification No.50/2003-CE.

iii) The assessee started clearance of manufactured goods without payment of central excise duty w.e.f. 23.10.2005, but they filed declaration under the said notification with the department after about two months i.e. on 23.12.2005 stating that the option under the said notification has been exercised on 23.10.2005.

iv) The impugned order denies the benefit of exemption under notification no.50/2007-C (supra) for the clearances made prior to 23.12.2005 i.e. during the period of 23.10.2005 to 22.12.2005 on the ground that assessee did not file the option for claiming benefit of exemption notification. Therefore, assessee is in appeal before the Tribunal.

2.2 The Revenue's appeal is mainly on the ground that impugned order went beyond the SCN and wrongly allowed the benefit of CENVAT credit to the assessee.

3. With the above background, we have heard ld counsels, Shri PK Sahu for the assessee and Shri HC Saini for the Revenue.

4. After having gone through the facts of the case and submissions of both the sides, it appears that the assessee is entitled to the benefit of Notif. No. 50/2003 (supra).. However, Revenue's objection is that the assessee informed the department on the claim of benefit of exemption about two months later. Therefore, Revenue claims that the assessee is entitled to the benefit of notification only with effect from the date when department was informed by the assessee on their claim of benefit of the notification.

5. Hon'ble Supreme Court in the case of Commissioner of *C. Ex. New Delhi Vs Hari Chand Shri Gopal* 2010 (260) E.L.T. 3 (S.C.) has held that though exemption provisions have to be complied with strictly some latitude may be shown in case of some requirements which are directory in nature, the non-compliance of such requirements would not affect the substance of notification granting exemption. In the present case intimation to the department about the option for claiming benefit of the exemption undertaken appears only a procedural requirement. The liberal attitude, therefore, has to be taken in this regard, when the assessee otherwise is entitled to the benefit of exemption notification no. 50/2003 (supra). The Hon'ble Supreme Court in the above case *inter alia* observes as under:

> **"Exemption Clause – Strict Construction**
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> **22.** The law is well settled that a person who claims exemption or concession has to establish that he is entitled to that exemption or concession. A provision providing for an exemption, concession or exception, as the case may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has to be placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions

have to be complied with. The mandatory requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are directory in nature, the non-compliance of which would not affect the essence or substance of the notification granting exemption. In *Novapan Indian Ltd* (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. H.H. Dave* – (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statue, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.

23. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction between provisions of statue which are of substantive character and were built in with certain specific objection[ns of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In *Tata Iron and Steel Co. Ltd,* (supra), this Court held that the principles as regard construction of an exception notification are no longer *res integra*; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature.”

6. Following the observations of Hon’ble Supreme Court (supra), the assessee Controls & Switchgears Co. Ltd is entitled to the benefit of exemption notification no.50/2003 (supra) for the relevant period. Consequently, impugned order is set-aside and the assessee’s appeal (No.E/2043/2007) is allowed with consequential benefit, if any. The Revenue’s cases appeal (No. E-2349/2007) also stands disposed-of accordingly.

(Pronounced on 13.04.2017___________).

(Justice (Dr) Satish Chandra)
President

(Ashok K. Arya)
Member (Tech)

pcs