CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1307 of 2010

(Arising out of order-in-appeal No. 42/CE/DLH/2010 dated 03.03.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-I)

DATE OF HEARING : 13.04.2017
DATE OF DECISION : 20.04.2017

CCE, Delhi-I …. **Appellant**
(Rep by Sh. M.R. Sharma, DR)

VERSUS

M/s Om Sons Cable Co. …. **Respondents**
(Rep. by Sh. S.K. Pahwa, Adv.)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52962/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the Department against the order-in-appeal no.42/CE/DLH/2010 dated 03.03.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-I.

2. The brief facts of the case are that the assessee-Respondents were engaged in the manufacture of the various types of cables falling under CETH No. 544.00 of the Schedule to the Central Excise Tariff Act, 1985 and registered with the Central Excise

Department. During the visit by the Central Excise Officers, it was found that the assessee-Respondents were also registered under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and availing the benefit of Customs Notification No. 20/99 for import of "Fibre Glass Roving" at concessional rate of duty for the manufacture of Telecommunication Grade Fibre Reinforced Plastic Rods (FRP). According to the Department, the said material was used for the manufacture of ordinary drop wire having conductors in the form of copper wire and used Fibre Glass Roving as strength member by directly extruding Fibre Glass Roving in between two cobber wires. The statement of Shri Rajender Kumar, Proprietor of the assessee-Respondents, was recorded wherein he has explained as to how the said imported material was used. Finally, the demand was raised. Being aggrieved, the assessee-Respondents has filed the appeal before this Tribunal who vide its Final Order No. 271/05-NB-A dated 23.02.2005 remanded the matter to the original authority.

3. It is the second round of litigation where the adjudicating authority has upheld the earlier order, but the Commissioner (Appeals) by impugned order has dropped the demand. Being aggrieved, the Department has filed the present appeal.

4. With this background, we have heard Shri M.R. Sharma, learned DR for the Revenue and Shri S.K. Pahwa, learned counsel for the assessee-Respondents.

5. After hearing both the sides and on perusal of the material available on record, we find that the Commissioner (Appeals) has considered the expert report from the Director (T)

Telecommunication Engineering Centre, New Delhi, who vide his letter dated 25.09.2001 made the following observations :

> "The Fibre Glass Roving is processed with particular grade of resin to make solid rigid fibre plastic rods. These rods used in the manufacturing of the optical fibre cable as strength members. The metal free optical fibre cable do not have any copper conductor.
>
> The sample have been examined and it was found that the above stated manufacturers have directly extruded the raw fibre glass roving along with 2 copper conductors to make the drop wire. In this case the Raw Fibre Glass Roving has been used to meet the strength requirement of the drop wire. No processing has been done on raw fibre glass roving, therefore, this cannot be termed as FRP (Fibre Reinforced Plastic Rode)."

6. In the instant case, the assessee-Respondents had imported the Fibre Glass Roving at concessional rate of duty from the Customs Ports at the strength of Registration Certificate and Procurement Certificates under Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 which had been issued by the Central Excise Department after due verification of the product intended to be manufactured out of the specified imported inputs and relevant information about receipt, consumption and balance been furnished to the Department by the assessee-Respondents against statutory periodical returns which have been audited by the concerned Revenue Audit Department as per Audit Report dated 06.09.2000. Thus, it appears that the Department was well aware of the fact that Fibre Glass Roving imported by the assessee-Respondents were used in the overhead Telecommunication PVC Cables with Fibre Glass Roving extruded with Copper Conductor as strength member for

reinforcement. When it is so, then we are of the view that all vital information regarding final product manufactured and the process of manufacture was available with the Department and the allegation of suppression of facts is not sustainable. The view taken by the Commissioner (Appeals) is supported by the ratio laid down by the Tribunal in the case of **Sriram Cables Pvt. Ltd. vs CC, Delhi/Chennai,** 2006 (199) ELT 95 (Tri.-Del), and **Surya Cables vs CC, Chennai,** 2004 (165) ELT 305 (Tri.-Del), before allowing relief to the assessee-Respondents. Hence, we are of the view that the said Fibre Glass Roving has been used in the manufacture of Telecommunication Grade FRP which comes into existence while being extruded along with copper conductor through the bath of PVC Compound and in this process FRP and Telecommunication Cable i.e. PVC Drop Wire comes into existence simultaneously which are used in the telecommunication. Thus, the condition of the Notification Nos. 20/99 was fulfilled. So, the assessee-Respondents were entitled for the exemption. When it is so, then we are not inclined to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein.

7. In the result, the appeal filed by the Department is dismissed.

(Pronounced in the open court on .04.2017)

(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay