IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 16/06/2017.
DATE OF DECISION : 23/06/2017.

Excise Appeal No. 2766 of 2007

[Arising out of the Order-in-Appeal No. 145-CE/MRT-I/2007 dated 17/07/2007 passed by The Commissioner (Appeals), Customs & Central Excise, Meerut.]

M/s Aditya Packaging Appellant

Versus

CCE, Meerut – I Respondent

Appearance

Shri R.K. Phillips, Advocate – for the appellant.

Shri H.C. Saini, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54323/2017 Dated : 23/06/2017

Per. B. Ravichandran :-

The appeal is against order dated 17/07/2007 of Commissioner (Appeals), Meerut – I. The appellants are engaged in the manufacture of corrugated cartons falling under Central Excise heading 4819. The appellant's production unit is located at Industrial Area, Haridawar. The appellants submitted a declaration on 27/03/2006 to avail exemption of Central Excise duty in terms of Notification No. 50/2003-CE dated 10/06/2003 as amended by Notification No. 76/2003-CE dated 05/11/2003. On perusal of the declaration, it was noticed that the appellants started manufacturing the excisable goods from 15/06/2005 and effected first clearance on 17/06/2005. In terms of the said notification, they were required to file their option to avail exemption before affecting first clearance and such option shall be effective from the date of exercising the same. As the appellants failed to comply with the said condition, the Revenue proceeded against them to deny the exemption during the period 17/06/2005 to 26/03/2006. The Original Authority confirmed the Central Excise duty liability of 13,98,787/- and equal amount of penalty was also imposed on the appellant. On appeal, the Commissioner (Appeals) denied the exemption under Notification No. 50/2003-CE, as amended and held that the appellants are liable to pay Central Excise duty after crossing the SSI exemption limit of Rs. 1,00,00,000/-. He reduced the penalty to Rs. 4,00,000/-.

2. The learned Counsel for the appellant submitted that the substantial benefit provided by the exemption Notification No. 50/2003-CE, as amended, which is to encourage the industrial units in backward areas, cannot be denied on the failure of fulfillment of procedural requirement. He submitted that filing of a declaration as required under Notification No. 50/2003-CE, as amended by Notification No. 76/2003-CE, is only procedural.

Further, he referred to condition (ii) (e) which states that "date on which option under this notification has been exercised". It is his submission that the intention to the legislature is to have a procedural condition to avail the notification. He further relied on the decision of the Apex court in **Mangalore Chemicals and Fertilizers Ltd. vs. Deputy Commissioner** reported in **1991 (55) E.L.T. 437 (S.C.)** to hold that non-observation of procedural condition is condonable.

3. The learned AR reiterated the findings of the lower authorities. He submitted that the conditions of exercising option in writing before effecting the first clearance is a substantial requirement to avail the exemption. This cannot be considered as a procedural infringement on the part of the appellant.

4. We have heard both the sides and perused the appeal records. We note that the Notification No. 50/2003-CE dated 10/06/2003 did not contain the conditions regarding exercising option in writing, when it was first issued. The said notification was amended on 05/11/2003 which brought in specifically three conditions for availing the notification. These are as below :-

> "Provided that the exemption contained in this notification shall apply subject to the following conditions, namely :-
>
> (i) The manufacturer who intends to avail of the exemption under this notification shall exercise his option in writing before effecting the first clearance and such option shall be effective from the date of exercise of the option

and shall not be withdrawn during the remaining part of the financial year;

(ii) The manufacturer shall, while exercising the option under condition (i), inform in writing to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise giving the following particulars, namely :-

(a) name and address of the manufacturer,
(b) location/locations of factory/factories ;
(c) description of inputs used in manufacture of specified goods ;
(d) description of the specified goods produced;
(e) date on which option under this notification has been exercised ;

(iii) The manufacturer may, for the current financial year, submit his option in writing on or before the 30th day of November, 2003”.

5. A perusal of the above conditions will make it clear that these are basic and substantial requirements to avail the exemption. These are specifically inserted after the issue of notification and clearly are intended to counter any misuse of the ‘area based exemption’ and also to make aware the jurisdictional officer about the exemption being availed by the assessee. These conditions do have specific legal implication and by no means be considered as a simple procedural requirement, infringement of which is condonable. The Hon’ble Supreme Court in **CCE, New**

Delhi vs. Hari Chand Shri Gopal reported in **2010 (260) E.L.T. 3 (S.C.)** observed as below :-

> "24. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable objective of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed. Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with

notwithstanding the non- compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential".

6. After careful consideration of the principles laid down by the Hon'ble Supreme Court and the facts of the present case, we are of the considered opinion that the conditions inserted in Notification No. 50/2003-CE are mandatory and cannot be held as mere procedural requirement. For effective monitoring of the exemption such pre-condition has been inserted in the notification. We find that in the present case, the appellants

failed to fulfill the condition. Accordingly, we find no infirmity in the impugned order. The appeal is dismissed.

(Order pronounced in the open court on 23/06/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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