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 : 22/06/2017.
DATE OF DECISION : 06/07/2017.

Excise Misc. Applications No. 50608, 50811 and 50607 of 2015 in Appeal No. 53629 of 2014

[Arising out of the Order-in-Original No. 33-34/COMMR/M-II/2013-14 dated 28/02/2014 passed by The Commissioner of Central Excise, Meerut.]

M/s Shirdi Industries Limited — Appellant

Versus

CCE, Meerut — Respondent

Appearance

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

Shri R.K. Mishra, 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. 54718/2017 Dated : 06/07/2017

Per. B. Ravichandran :-

The appeal is against order dated 28/02/2014 of Commissioner of Central Excise, Meerut – II. The appellants are engaged in the manufacture of MDF Board, High Pressure Laminates, Plain Particle Board and Furniture components etc. falling under Chapter 44 of Central Excise Tariff. The resins manufactured by the appellants are consumed captively in the manufacture of their final products, particle boards etc. The appellants are availing exemption under Notification 50/2003-CE dated 10/06/203. The dispute in the present appeal relates to the eligibility for exemption of intermediate products manufactured by the appellant for captive consumption. The resins manufactured by them were held to be dutiable by the Original Authority who confirmed a duty demand of Rs. 6,11,76,142/-. He also imposed a penalty of equivalent amount in terms of Section 11AC of Central Excise Act, 1944.

2. The learned Counsel for the appellant submitted that the very same issue for the later period came up for decision before the Tribunal, Allahabad Bench. He informed that after detailed examination, the Tribunal vide final order No. 70520 of 2017 dated 19/05/2017 held that the appellants are not liable to duty on these resins manufactured by them. The Tribunal was dealing with the issue for the period 2007-2008 to 30/11/2011. The period of dispute in the present appeal is from December 2011 to February 2013. As such, the learned Counsel submitted that the matter stands resolved in their favour by the order of the Tribunal, Allahabad Bench.

3. The learned AR reiterated the findings of the lower Authority.

4. We have heard both the sides and perused the appeal record. We note that the Tribunal, Allahabad Bench have dealt with the very same issue for the earlier period in the appellant’s

own case. Vide the final order dated 19/05/2017, the Tribunal recorded the following finding :-

> "10. Having considered the rival contentions and on perusal of the records, we find that the impugned order is vitiated on the issue of marketability. The learned Commissioner has relied on unsubstantiated Data from the website, which is also vague in its nature. There is no evidence brought on record that the products and the Companies/Manufacturers listed by the learned Commissioner for reliance in the impugned order, are same or similar to the product manufactured by the appellant in respect of quality and specifications. The learned Commissioner has erred in observing that the characteristics of the product of the appellant are same with that of the various manufacturers from the website without any evidence. Similarly, referring to the manufacturer M/s Akolite Synthetic Resins, Mangalore, the learned Commissioner have erred in observing that in view of this license granted to them by BIS who are manufacturers and sellers of various resins in the market. Accordingly, the resins manufactured by the appellant are also marketable. We also find that the learned Commissioner have erred in observing that as similar goods have been advertised on the website by various manufacturers, then market must exist there. As the goods have been advertised then they are capable of being bought and sold. We find that learned Commissioner have erred in holding that the appellant's goods are also capable of being bought and sold without any chemical composition comparison alongwith competitive shelf life study. Further, reliance placed by the learned Commissioner on the Ruling of **GM Laminates Pvt. Ltd. vs. CCE** reported in **1996 (87) E.L.T. 197**, wherein this Tribunal had observed – we also find that under the new Central Excise Tariff, the

product can merit classification under sub-heading 3909, in view of note 3 (e) of Chapter 39. Once it is established that paper is quoted with certain resoles which have the essential characteristics of meriting classification under Chapter 39 and which according to Note – 01 of Chapter 39 are to be called plastics. We find that learned Commissioner erred in relying on the said ruling in absence of comparison of chemical composition. We further find that the learned Commissioner have erred in ignoring the clarification given by the Government of India in OM No. 56016/41/2012/PC-II dated 1st June 2012, issued by the Ministry of Chemicals and Fertilizers as noticed hereinabove. We further observe that the said clarificatory circular is binding on the officers of the Government, including the respondent Commissioner. We further find that admittedly wax is used by the appellant in manufacturing of glue, which is clear from the chart reproduced at para 5.1 of the SCN and para-5 of the impugned Order-in-Original. Admittedly, such glue is based on PF, UF and MF. Thus, in view of the aforesaid admitted facts, as per HSN explanatory notes to Chapter 39, glue manufactured by appellant for use as adhesive is outside the preview of Chapter 39. Admittedly, the glue in question is curried glue to which hardener and other substances are added and therefore, glue manufactured by the appellant is not covered by clause 1 to note 6 of Chapter 39, such glue being not in the form of block, lump or powder. We further find that the preceding decision of this Tribunal in the case of **Balaji Action Vilwell vs. CCE, Meerut** reported in **2016 (332) E.L.T. 367 (Tri. – Delhi)** is squarely applicable in the facts of the present case. Similar issue was considered by this Tribunal and after considering the scope of heading 3909 with Chapter Note 06 to Chapter 39 and HSN, it have been held that glue is not in primary form and therefore not classifiable under Heading 39.09. We further find that the assessee in **Balaji Action Vilwell** (supra) was also manufacturing the same final product as that of the appellant, hence the manufacturing process and the product considered in the said case is identical to that of the appellant. We also find that in the said case, Department had relied upon the information obtained from website of one Akolite Synthetic Resins, Mangalore, and some other manufacturers. This Tribunal observed that the process undertaken by such manufacturers have not been examined and therefore the correctness of comparison cannot be upheld. Accordingly, we find that the impugned order is bad and fit to be set aside".

5. Following the above decision of the coordinate Bench in the appellant's own case, we set aside the impugned order and allow the appeal. The miscellaneous applications connected to this appeal are also disposed of.

(Order pronounced in the open court on 06/07/2017.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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