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

Date of hearing/decision: 10.07.2017

Excise Appeal Nos. 26159 - 26160 of 2013

(Arising out of order-in original No. 52 and 53/2012 (ST) dt. 31.12.2012 passed by the Commissioner of Central Excise, Customs and Service Tax, Tirupati)

M/s Dalmia Cements (Bharat) Limited Appellant

Vs.

CCE&C, Tirupati Respondent

Appearance:

Sh. Sameer Rohtagi, Advocate for the appellant
Sh. H. C. Saini, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 55507 - 55508/2017

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order-in-original No. 52-53/2012 (ST) dt. 31.12.2012 passed by the Commissioner of Central Excise, Customs and Service Tax, Tirupati. In both the appeals, the identical issue is "whether the appellant is entitled to concessional rate of duty as per Notification No. 4/2006-CE dated 01.03.2006 with respect of the sale of cement in 50 kg. bags to various customers including builders and developer by regarding the said sales as institutional sales? .

2. The facts in brief are that the appellant is engaged in the manufacture of cement and clinker falling under chapter heading 25 of the Schedule to the

Central Excise Tariff Act, 1985. The appellant had cleared cement in the package of 50 kgs. bags without applying retail sale price and paid the duty at the rate applicable as per Notification No. 4/2006 dated 01.03.2006. But the department has disallowed the same. Being aggrieved, the present appeals are filed by the appellant.

2. With this background, we heard Shri Sameer Rohtagi, ld. Advocate for the appellant and Sh. H.C. Saini, AR for the Revenue.

3. After hearing both the parties and on perusal of the record, it appears that the identical issue has come up before the Tribunal in assessee's own case (Final Order No. 1389/08 dt. 08.12.2008) where the ratio laid down in the case of Grasim Industries Ltd. (Unit-I) vs. CCE, Trichy vide Final Order No. 1169/08 dt. 20.10.08 was followed where it was observed that –

> "3. The case of the department is that the cement cleared in 50 kg. bags to industrial / institutional consumers during the period in dispute was not covered under Sl. No. 1C of the Notification No. 4/2006-CE . The very same issue was considered by the Tribunal in Grasim Industries Ltd. (supra), wherein the Tribunal accepted the contention of the assessee that the benefit of notification was available to on the goods cleared to the 'industrial/ institutional consumers' and that the goods in question would be covered either under Sl. No. 1B or 1C of the notification by virtue of the second proviso to the Explanation to Sl. No. 1C. The relevant extract of the Tribunal's final order is reproduced below:-
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> > "4. Here is a case where the circular was cited but not considered. It is also noticed that the ld. Commissioner was carried away by an opinion of the Controller of Legal Metrology which was to the effect that 50 kg. cement packages were covered under the provisions of the aforesaid Act and Rules. The expert's opinion was apparently given without reference to the material fact that the cement in question had been cleared to industrial / institutional consumers. The adjudicating authority chose to go by the opinion of the Legal Metrology Department, saying that they were the competent experts to certify such cases. As rightly pointed out by the learned Counsel, as the benefit offered under the Notification pertains to goods cleared to industrial / institutional

> consumers and as this aspect was overlooked by the Legal Metrology expert also by the learned Commissioner, the impugned order is liable to be set aside. The Board's clarification on the relevant question was wrongly by-passed by the adjudicating authority. We have found favour with the assessee's case in view of the clarification issued by the CBEC, which is to the effect that no RSP requires to be printed on the goods sold to 'industrial/ institutional consumers' as defined under the rules framed under the Standards of Weights and Measures Act and that such goods would be covered under Sl. No. 1B and IC of Notification No. 4/2006-CE by virtue of the Second proviso to the Explanation to Sl. No. 1C of the Notification as amended. The Board's clarification squarely covers the case in favour of the assessee.
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> 4. Following the ratio of the above order is in Grasim Industries Ltd. case (supra), we set aside the impugned order and allow the appeal".

8. By following our earlier order (supra), we find no reason to sustain the impugned order. The same is hereby set aside.

9. In the result both the appeals are allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Justice (Dr.) Satish Chandra)
President

Pant