IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 1902-1903 of 2009
E/MISC/50349/2017

[Arising out of Order-in-Appeal No. 68-69/2009 dated 13.4.2009 passed by the Commissioner of Central Excise (Appeals) New Delhi I]

M/s. Servokon Systems Pvt. Ltd. **Appellant**
Shri Kamruddin, Director

Vs.

Commissioner of Central Excise **Respondent**
Delhi II

Appearance:

Shri Deepak Thakur and Shri Himanshu Bhargave, Advocates for the Appellants
Shri Ranjan Khanna, AR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 21.07.2017

FINAL ORDER NO. 55761-55762/2017

Per: Justice (Dr.) Satish Chandra:

The appellant has filed the Misc. application under section 151 of the Code of Civil Procedure.

2. Today Shri Amaresh Kumar Singh. Learned Counsel has withdrawn the said application after lengthy arguments. So, the application is dismissed as withdrawn.

On Merit

3. The present appeal is filed against Order-in-Appeal No. 68-69/2009 dated 13.4.2009. Shri Amaresh K. Singh, learned Counsel submits that the copy of necessary documents have not been provided to the appellant inspite of several requests from day 'one'. He also submits that without documents, no argument can be advanced in this case. He refused to have received any document which was made available to him. Finally, learned Counsel submits that so he cannot argue the case. For the purpose, the appellant has moved the Misc. application under section151 of Code of Civil Procedure, 1908 which has been withdrawn after the lengthy arguments in a high tone.

4. From the record, it appears that the appellant did not co-operate with the lower authorities. Commissioner (Appeals) in his Order-in-Appeal has observed as under:

> *"4.4 The contention of the appellant that the copies of all the RUD were not made available to them. However, copies of some of the documents were given to the Appellant on 12.9.2000 only. Appellant could not attend the hearing. Appellant informed the Commissioner vide letter dated 06.10.2000 that copies of a number of RUD were not furnished and requested that the same may kindly be given early so as to enable the Appellant to submit reply in the matter. Request for supply of copies of the remaining RUD was repeated vide letters dated 13.11.2000, 24.11.2000, 18.12.2000 and 04.01.2001 but still the Appellant could not get copies of the remaining documents. It is observed that the appellant was given several opportunities by the Central*

Excise, MOD IV, Delhi to inspect the said records and also to give copies of the said documents, but the appellant failed to get the same. It is also observed that the appellant also not attended the hearing fixed by the Adjudicating Authority at the time adjudicating the case. I hold that this tactics of the appellant is nothing to only delaying the proceedings."

5. From the above, it appears that the appellant is using various tactics just to delay the proceedings. The order-in-original was passed in the year 2007 and present appeal was filed in the year 2009. Even after a decade, the learned counsel is unable to argue the case on merits.

6. On the other hand, Shri Sharvan Bansal, learned Counsel for the department submits that whatever documents were available with the Department, the same were offered to the appellant but he never collected it. No new document can be generated.

7. After hearing both the parties, we are of the view that learned Counsel is not arguing the case on merits but using tactics for delaying the proceedings, which cannot be accepted. Misuse of judicial process is not permissible. Regarding the documents, the Commissioner (Appeals) in the impugned order has given his submission in para 4.4 (supra) :-

8. From the record, it appears that the appellant at the relevant time was engaged in the manufacture of voltage stabilizers, variacs, CVT falling under sub-heading 8504.00 of the schedule to the Central Excise Tariff Act, 1985. On 29.04.98, the factory premises of M/s.

Servocon Systems Pvt. Ltd.; and M/s. Powerkon Systems were visited by the officers. They found that the appellant M/s. Servocon Systems Pvt. Ltd. has Shri Kamruddin as the Director and Shri Avinash Arora Field/ Administrative Manager of the said company. Another company M/s. Powerkon Systems is a proprietary concern of Smt Fatima Begum wife of Shri Kamruddin. The unit was engaged in manufacturing of voltage stabilizer. Brand name was used as 'Servokon'. Both the units were in the same premises. 120 pieces of voltage stabilizers were found in the unauthorised godown which was not declared by the appellants to the Central Excise department. On physical stock taking in M/s. Servokon Systems Pvt. Ltd., 24 pieces of servo CVT , 13 pieces of stabilizers and 32 pieces of variacs were found in the factory premises of these units. Since no Central Excise documents were produced, same were seized under Section 110 of the Customs Act, 1962.

9. During the visit, no stock register, attendance register of M/s. Powerkon System was available on record and all record was being maintained by M/s. Servokon Systems Pvt. Ltd. Shri Kamruddin and his wife Fatima Begum are the Director of M/s. Servokon System whereas M/s. Powerkon System is a proprietary concern with Fatima Begum as proprietor. It appears that initially, there was no firm like M/s. Powerkon System and this new firm was floated by Shri Kamruddin in the name of his wife Smt Fatima Begum only to bifurcate the sales of M/s. Servokon Systems Pvt Ltd. in order to

remain within the exemption limit of Rs.30 lakh (as the then limit was) under Notification No. 1/93 dated 26.02.93. The attendance registers recovered from M/s. Powerkon System had shown that there were 22 labours / employees working with M/s. Servokon Systems Pvt. Ltd. The statement of Shri Kamruddin was recorded. From the record, it appears stated that both the units are run by close family members i.e. husband and wife, Shri Kamruddin and his wife Smt. Fatima Begum.

10. Further, it appears that both the units have no independent plant and machinery and were totally inter-dependent on each other for manufacturing its product including voltage stabilizers in complete form. M/s. Powerkon System Ltd. has no electricity connection and borrow the power from M/s. Servokon System Pvt. Ltd. but without making any payment of the bill. Labour in both the units were common. Godown was also common.

11. In the above circumstances, the department by the impugned order has clubbed the clearance of M/s Servokon Systems Pvt. Ltd. and M/s. Powerkon Systems Pvt. Ltd. by denying the exemption as per notification. In the peculiar facts and circumstances of the case, same appears reasonable.

12. Regarding, the clandestine removal, kaccha challans were recovered. Goods were seized which were not mentioned in the stock register. In fact, there was no stock register. After making the verification and statement from the buyers and by clubbing the material the department has issued Show cause notice and demanded the duty.

In the peculiar facts and circumstances of the case, same appears reasonable. Hence, we find no reason to interfere with the impugned order. Same is sustainable along with the reasons mentioned therein.

13. In the result, both the appeals filed by the appellants are dismissed which were originated in April, 1998.

(Dictated and pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

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