

In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/52789-52793/2015
(Arising out of Order-in-Original No.20/Commr/DDN/2015 dated
27.04.2015 passed by Commissioner of CE & Customs, Dehradun)

M/s Victoria Automotive Inc.
Sh Daleep Suneja, Unit Head
Sh HS Banga, Partner
Sh Naveen Kumar Maheshwari, Hod
Sh Baljeet Singh Rawat ...Appellant

Vs

CCE Dehradun ...Respondent

Appearance:

Present for the Appellant : S/Sh Narsimhan & Shashvat Arya, Advocates
Present for the Respondent : Shri HC Saini, DR

Coram: HON'BLE MR S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing: 22.08.2017
Dt. of pronouncement: 29.08.2017

Final Order No.56294-56298/2017

Per B. Ravichandran,

These five appeals are against common impugned order dated 27.04.2015 of Commissioner of Central Excise, Dehradun. M/s Victoria Automotive Inc. Haridwar, Uttarakhand, (main appellant) are engaged in the manufacture of motor vehicle parts falling under Chapter 87 of the First Schedule to the Central

Excise Tariff Act, 1985. The main appellant manufactured excisable goods in the factory located in plot No.4 and part of plot No.17, Sector 1B, Integrated Industrial Estate, SIDCUL, Haridwar, Uttarakhand. The main appellant obtained Central Excise registration in respect of Unit-I and filed a declaration on 21.04.2008 for availing area based exemption under Notification No.50/2003-CE dated 10.06.2003 in respect of Unit-II. While filing the intimation to avail exemption under the said notification in respect of Unit-II, the main appellant submitted detailed ground plan demarcating Unit-I and Unit-II of the manufacturing facility in the said premises.

2. The jurisdictional officers of Central Excise conducted certain enquiry and verification regarding the eligibility of the main appellant for the above-mentioned area based exemption. The Revenue entertained a view that the claim of the main appellant to the effect that Unit-I and Unit-II are to be dealt with separately for excise duty purposes and the exemption claimed for Unit-II on such basis, is not legally tenable. The Revenue held a view that the factory of the main appellant is one and the same and as such the main appellant cannot avail exemption under Notification No.50/2003 for some of the products and not in respect of some other products. Holding that the main appellant is not eligible for exemption under the said notification as it was considered that only one factory was in existence, proceedings were initiated against the main appellant, partner of the main appellant and certain officials of the main appellant.

3. The demand-cum-SCN dated 07.04.2014 proposed denial of exemption to the main appellant along with proposal to impose penalties on all the noticees

under various provisions of Central Excise Act, 1944 under the Rules, 2002. The case was adjudicated by the Commissioner of Central Excise, Dehradun resulting in the impugning order. The Commissioner held that the main appellant is not eligible for exemption under notification No. 50/2003-CE and confirmed Central Excise demand of Rs.3,45,87,178/-. He imposed equal amount of penalty on the main appellant in terms of Section 11AC of the Act. Further penalties of various amounts were imposed on the partner and officials of the main appellant under Rule 26 of Central Excise Rules, 2002.

4. The Id Counsel appearing on behalf of the appellants contested the findings in the impugning order. He submitted elaborately on the facts and legal points along with supporting case laws. His submissions can be summarized as below:

- a) In terms of notification 50/2003-CE, the exemption is available to industrial units located in the specified area, manufacturing specified goods. There is no bar in having two units within the same factory. The notification clearly provides for exemption to "industrial units" located in the specified areas. The notification uses two expressions "unit" & "factory" at different places. The interpretation of the Id Commissioner that the exemption should be in respect of whole factory is not legally tenable. The terms "unit" & "factory" used in the said notification cannot be said to be conveying the same meaning or used synonymously. The Commissioner fell in error in proceeding on the basis that the entire factory is required to be registered with the department. The exemption is neither manufacturer-specific nor

factory-specific but unit-specific. The Commissioner disregarded the fact that the definition of “factory” under Section 2 (e) of the Central Excise Act clearly shows that it is a wide area which can be comprising of a number of units/divisions, including premises thereof. A unit in the factory is a part of the said factory and will have separate identity if involved in an identifiable manufacturing activity on its own

b) Specific Rebuttal to findings of the Ld Commissioner in the impugned order.

Para No.	Findings of the Ld Commissioner	Specific Rebuttal
5.30 & 5.50	The units are not independent of each other based on usage of common water, electricity, canteen, DG sets, administrative sections etc. The whole premises of the Appellant fall within the ambit of a single unit/factory and the Appellants have artificially created two units in the same factory with the motive to illegally claim exemption.	There is no legal bar in having one administrative section or other common facilities for the two units, in the same factory. Similarly, there is no requirement that factory has separate lease deed, DIC Registration, Trade Tax Registration, Pollution control registration, as these requirements are factory specific and not unit specific.
5.17	Since two units are not situated on different locations/premises, the justification given vide letter dated 07.12.2011 is questionable.	Vide letter dt 07.12.2001, Appellants submitted that products manufactured are separate and distinct and both units have separate manufacturing facilities, labour etc. Further, two units are not retrained from simultaneously availing benefit under Rule 18/19 of the Excise Rules and Notification No.50/2003. There is no legal bar in having more than one unit in the same factory.
5.7, 5.8 & 5.11,	If the provisions of the Excise Act and Rules are	Arguments of Ld Commissioner are

15.14,15.5,!5.7 & 15.18	read harmoniously, it would appear that wherever the word 'unit' has been used in any of the provisions of the Excise Act or Rule made thereunder, the same refers to 'factory' in which excisable goods are manufactured, therefore, exemption has to be extended to excisable goods manufactured in the factory located in any of the specified areas.	without legal basis. Detailed submissions made above regarding having two units in the same factory are relied again at this point.
5.52	Ld Commissioner has held that though the Appellant is entitled to avail the benefit of Cenvat credit, however mere production of documents showing payment of duty is not sufficient as it needs to be shown that goods/services mentioned in such documents are received in the factory and used in the manufacture/sale of final products.	There is no dispute regarding the fact that Cenvat credit was only taken by Unit-I. The said Unit-I was paying Central Excise duty and registered with Central Excise Department, whereas Unit-II was availing exemption under Notification 50/2003-CE and therefore, not registered with the Department.
5.21	Reliance on the decision of JK Synthetics Ltd., 1991 (52) ELT 116 to hold that if different excisable goods are manufactured within one factory premises, assessee required to obtain one consolidated license instead of different licenses for different commodities in one factory.	The case applicable only to the extent that there is no bar in having two units in the same factory. The Appellant correctly obtained Central Excise Registration for unit that was paying Central Excise duty.
5.32 & 5.33	It has been held that where a manufacturer is entitled to exemption in respect of all the goods manufactured in the factory but he wants manufacture in his factory other goods which do not fall within the ambit of	Comparison between SSI exemption and Area based exemption Notifications is incorrect. The reasoning adopted by the Ld Commissioner that SSI exemption envisages both types of clearances

	exemption, the Notification contains the provisions enabling the manufacturer to manufacture such goods. For instance, in case of SSI units, the branded goods manufactured in the SSI unit are not exempted with the result that in SSI unit/factory, both types of goods i.e. the goods in respect of which exemption is availed and the goods on which the duty is required to be paid can be manufactured. However, in case of area based exemption, no such liberty has been given.	also supports the case of the Appellant, as in the present case, Notification No.50/2003 uses different terminologies which is clear indicator of the legislative intention of treating the expressions 'unit' & 'factory' differently.
5.35	Ld Commissioner has held that before granting registration, no physical verification was carried out and registration certificate was granted on the basis of declaration made by the Appellant in the application for registration.	Department had acknowledged the declaration along with revised site plan wherein, presence of Unit-I and Unit-II was evident. Post verification of the Appellant's premises conducted when Range Officer Shri V.K.Bhatnagar and Sector Officer, Shri B.S.Bisht visited the factory premises of the Appellant for post registration verification.

5. The Id AR submitted that impugning order examined the full factual background and location of the manufacturing facility of the appellant, as declared by the appellants. The appellants had only one factory with no clear demarcation of two different units. They have common registration with DIC, Sales Tax, Service Tax, Pollution Control Authorities, common electricity connection and generator facilities. The work force of the entire factory is

commonly dealt with for labour law, ESI, etc. There is no unit-wise recognition by any authority and as such the claim of the appellant that the statutory provisions applicable to Unit-I & II should be examined separately, is not acceptable.

6. We have heard both the sides and perused the appeal records. We note that the impugned order elaborately examined the identity of the appellants factory as a whole with various statutory Government authorities and utility agencies. We note that such appreciation is not directly relevant to examine the application of exemption under Notification No.50/03. In fact, the appellant also did not contest the fact that they have only one factory in the said location. They only pleaded that in the said factory there were two identifiable manufacturing units involved in the manufacture of different types of products in different production lines. We note that there were certain factual errors recorded by the original authority while examining the dispute. He records that the excise registration and the declaration filed under Notification No. 50/03, covered entire premises. We note that in the intimation dated 21.04.2008, the appellant categorically displayed a site plan clearly demarcating Unit-I & Unit-II with a specific remark. Similarly, the original authority records that the term “unit” used in the said notification refers to the said “factory”. The original authority records that it does not matter for Central Excise purposes as to by which name – whether by name of plant, unit or the like, each set is described. Since each unit cannot be described as a factory, he proceeded to hold that the whole premises should be considered as single entity and exemption was accordingly denied. While examining the decision of Bombay High Court in Devidayal Electronics and

Wires Ltd, 1984(16) E.L.T. 30 (BOB.), the original authority erred in not examining the provisions of Notification No. 50/03.

7. He records, incorrectly, that the word “industrial unit” has not been used in the said notification. Whereas we note that para 2 of the said notification which talks about application of exemption to different kinds of units clearly states that the said exemption is for new industrial unit set-up in the declared area or industrial units existing but undertaking substantial expansion. In other words, the exemption itself is available only to “industrial units”. The exemption is not extended to factory. It is clear that the terms of the notification when read together will clearly reveal that different terms are used in different contexts and summary conclusion based on inference and presumption as made by the original authority is not supported.

8. The CBEC vide their letter dated 21.03.2006 addressed to Secretary (Industrial Development), Government of Uttaranchal clarified that in case of a manufacturer, producing motor vehicles, if a new assembly line/ production line is installed after 31.03.2007, then the benefit of said notification would not be available to motor vehicles manufactured on such assembly/production line. Similarly, if the commercial production of a particular kind of specified goods has not commenced before 31.03.2007, the benefit of the said notification would not be available to such goods. We note that the said clarification brings-out that the exemption is to be applied even to a new assembling line which in any case will be part of an already existing factory having other manufacturing unit/facility.

9. The Tribunal while examining the application of exemption under the above said notification in the case of M/s Tirupati LPG Industries Ltd, 2015 (324) ELT 201 (Tri.-Del.) relying on the decision of the Hon'ble SC in Reckitt Columan of India Ltd., 1997 (92) ELT 457 (SC) held: *"in our view, this ground for denial of exemption to cylinder unit is totally incorrect, as held by Apex Court in the case of Reckitt Colman of India Ltd. (supra) each section or part of a factory manufacturing a different commodity has to be treated as separate manufacturing unit. The same view has been expressed by the Apex Court in the case of Himalayan Co-op. Milk Product (supra) and also Hon'ble Bombay High Court in the case of Devidayal Electronics & Wires (supra). Therefore, a factory manufacturing more than one commodity in different sections, has to be treated as consisting of more than one manufacturing units and each section or part of the factory would be independently eligible for exemption, as the duty exemption under Notification No.50/2003-C.E. is unit-wise and not factory-wise. Therefore, for determination of eligibility of cyclinder unit, for exemption under Notification No.50/2003-C.E. the capacity expansion of 25% or more has to be seen in respect of this unit only and not the capacity expansion of the entire factory as a whole. In view of this, the impugning order denying benefit of exemption in respect of cylinder unit is also not correct."*

10. In Devidayal Electronics & Wires Limited (supra) while interpreting the provisions of Notification No.74/1978-CE, the Hon'ble Bombay High Court held as below:

“5. The Notification uses the word “factory” and it used the words ‘industrial unit’. It must, therefore, be assumed that the words were intended to bear different meanings. Put differently the words “industrial unit” must mean something other than “factory”.

11. The above-said decision has been noted by the Apex Court with approval. It was observed by the Apex Court that the word/expressions-“factory” and “industrial Unit “ when used in the same notification would be presumed to have been used for different meaning. It was held that industrial unit would mean something other than factory, which would be a separate isolated part of plant which is exclusively used for manufacture of goods for which exemption is claimed. 2000 (120) ELT 327 (SC).

12. We also note that in various decisions, the Tribunal held that terms “unit” and “factory” cannot be accorded the same meaning for the purpose of Notification No.50/03. A notification grants exemption to new industrial units or existing industrial units undertaking substantial expansion. The exemption is not with reference to a factory. This is clear from the wordings of the notification. We also agree that the definition of “factory” under Section 2(e) of the Central Excise Act is much wider and cannot be made applicable to a unit/industrial unit involved in manufacture of specified goods. All such units are necessary part of a factory, if located in the contiguous area. Each division of a factory manufacturing different identifiable items or undertaking different identifiable processes will have to be considered as a unit of the factory.

13. On careful consideration of the impugned order and the submissions of the appellant against the said order, we find that the impugned order is not legally sustainable. Accordingly, we set-aside the same and allow appeals with consequential relief.

(Pronounced in Court on 29.08.2017)

(S.K. Mohanty)
Member(Judicial)

(B. Ravichandran)
Member(Technical)

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