CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1200 of 2011

(Arising out of Order-in-Appeal No. 26-27/CB/CE/JPR-II/2011dated 22.02.2011 passed by the Commissioner of Central Excise (Appeals-II), Jaipur**)**

DATE OF HEARING : 21.11.2017
DATE OF DECISION : 21.11.2017

M/s Guljag Indus. Ltd. …. Appellants
(Rep by Sh. O.P. Agarwal, CA)

VERSUS

CCE, Jaipur-I …. Respondent
(Rep. by Sh M.R. Sharma, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 58061/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 26-27/CB/CE/JPR-II/2011dated 22.02.2011 passed by the Commissioner of Central Excise (Appeals-II), Jaipur. The period in dispute is March to December, 2000.

2. This is the second round of litigation before the Tribunal. Earlier, the Tribunal vide its Final Order No. A/405/03-NB

dated 16.07.2003 had rejected the claim of the assessee-Appellants. Being aggrieved, the assessee-Appellants approached the Hon'ble High Court of Rajasthan at Jaipur [D.B. Central Excise Appeal No. 7/2003]. The Hon'ble High Court vide its order dated 11.01.2007 has directed that "......Adjudicating Authority to first decide the question of proper classification of the articles in question and on that premise consequential order about modvat credit may be determined."

3. In pursuance to the direction of the Hon'ble High Court, the adjudicating authority has passed the impugned order whereby the Cenvat credit on chemical storage tanks was denied. Being aggrieved, the assessee-Appellants have filed the present appeal.

4. With this background, we have heard Shri O.P. Agarwal, learned Chartered Accountant for the assessee-Appellants and Shri M.R. Sharma, learned DR for the Department.

5. The learned Chartered Accountant submits that they are the manufacturer of 'Chemical Storage Tanks'. They fabricated storage tanks for use in their factory and paid excise duty by initially classifying under sub-heading 73.09 of the Central Excise Tariff Act, 1985 and took cenvat credit. The Department objected to such cenvat credit that the goods falling under sub-heading 73.09 would not qualify to be capital goods. He also submits that in the tanks indirect heating and cooling takes place with the help

of hot/cold water circulating between its two walls. He further submits that the storage tanks are not general storage tanks, but are chemical storage tanks in which process of chemical takes place by change of temperature as is clear from para 3(iii) of the impugned order. Lastly, he made a request that it may be placed under Chapter Heading 8419 and allow the cenvat credit.

6. On the other hand, the learned DR for the Department, justified the impugned order.

7. After hearing both sides and on perusal of the material available on record, it appears that the controversy, in the present appeal, is regarding the classification. After going through the Chapter Note 73 and 84 of the Central Excise Tariff Act, 1985, we find that the tank with temperature controller is classifiable under Heading 84.19. The contention raised by the assessee-Appellants that storage tank had such facility is not disputed in view of the observation made by the Tribunal in its earlier order. So, we are in agreement with the contention of the assessee-Appellants that they are eligible for cenvat credit on the duty paid on such tank. Hence, we approve the classification under Heading 84.19 and allow the cenvat credit on the duty paid on such tank. Consequently, the penalty imposed also stands dropped.

8. The second issue regarding mono rails and structure for various towers and acid tank is not pressed by the learned

Chartered Accountant. Hence, the same is dismissed being not pressed.

9. In the light of the above discussion, the appeal filed by the assessee-Appellants is partly allowed and the impugned order is modified accordingly.

10. In the result, the appeal filed by the assessee-Appellants is partly allowed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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