IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 8.1.2018

Appeal No. E/51303/2017-DB

(Arising out of Order-in-Original No. HPU/EXCUS/000/APPL-I/310/2016-17 dated 19.1.2017 passed by the Commissioner, Customs, Central Excise & Service Tax, Meerut (UP).

CCE & ST, Dehradun	Appellant
Vs.	
M/s Paraj Exim	Respondent

Appearance

Shri H. Saini, D.R.	-	for the appellant
Shri R.S. Tandan, Advocate	-	for the respondent

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

Final Order No. 50137/2018

Per **Justice Dr. Satish Chandra :**

The present appeal is filed by the department against the Order-in-Original No. 310/16-17 dated 19.1.2017.

2. The brief facts of the case are that M/s Om Sai Motor Industries (OSMI) was engaged in the manufacturing of the auto parts in Pantnangar - Rudrapur and was availing the area based exemption under Notification No. 50/2003 dated 10.6.2003, which was available up to 30.12.2019.

3. In October, 2015, OSMI has established another unit pertaining to the gold and silver bar, in addition to the auto parts. Due intimation was provided to the department and appellant has started to avail the area based exemption pertaining to the new unit of gold and silver. Prior to it, the appellant has sold some machinery of the auto part unit but production was continued.

4. On 15th October, 2015, the appellant has purchased the silver and gold unit from M/s OSMI and shifted the same to another plot. The appellant has claimed the area based exemption to the purchase unit of the gold and silver, which was denied by the department. But the Commissioner (Appeals) by impugned order has allowed the same. Being aggrieved, the Department has filed the present appeal.

5. With this background, we heard Shri H.C. Saini and Shri R.S. Tandan, ld. Counsel for the parties and perused the material available on record.

6. During the course of arguments, our attention was drawn to the Board's Circular No. 939/29/2010 dated 22.12.2010, where it is stated that **"the provisions of these notification do not place a bar or restriction on any addition/modification in the plant or**

machinery or on the production of new products by an eligible unit *after the cut-off date and during the exemption period of ten years as per the notification.*"

7. From the above, it appears that the existing unit who is availing the area based exemption is entitled to add the new plant for the production of new products. In the instant case, the new product is the gold and silver bar. So, it is according to law.

8. Further, the Board's Circular No. 960/03/2012 dated 17.2.2012, is stating that the change of ownership or change of the factory premises does not de bar the unit to avail the area based exemption, that will continue.

9. During the course of arguments, the main thrust of the both the parties is regarding the area based exemption on the gold and silver unit. The departmental view is that area based exemption was never granted to the respondent and was never availed by the respondent. On the other hand, the respondent claim that it was availed and production was continued.

10. By considering the totality of the facts and circumstances of the case, we are of the view that change of the ownership and change

of the plot does not matter. The core issue is whether the gold unit which was purchased by the respondent was availing the area based exemption or not. Only for this limited purpose, the matter is remanded to the adjudicating authority to verify the same and decide the issue in the light of above discussion but by providing the reasonable opportunity to the appellant. Additional evidence, if need be, may be admitted as per law.

11. In the result, the impugned order is set aside and appeal is allowed by way of remand.

(Dictated & pronounced in open Court)

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

RM