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

Date of hearing/decision: 05.04.2018

Ex. Appeal Nos. 54348 of 2015 with Misc. Nos. 50005 & 50176 of 2018
Ex. Appeal Nos. 52996 - 52997 & 52251of 2016 with
Ex. Misc. Nos. 50004, 50179, 50006 & 50178 of 2018
(Arising out of Order-in-Original No. 27/COMMISSIONER/DDN/2015, 37 - 38/COMMISSIONER/DDN/2016 dated 18.08.2015, 26.08.2016 passed by the Commissioner of Customs & Central Excise & Service Tax, Dehradun).

M/s DPS Polymers Appellant

Vs.

CCE, Dehradun Respondent

AND

Excise Appeal No. 54136 of 2015 & E/M-50177/2018
(Arising out of Order-in-Original No. 27/COMMISSIONER/DDN/2015 dated 18.08.2015 passed by the Commissioner of Customs & Central Excise & Service Tax, Dehradun).

CCE, Dehradun Revenue

Vs.

M/s DPS Polymers Respondent - assessee

Appearance:

Sh. Pawanshree Agarwal, Advocate for the assessee
Sh. S. K. Bansal, AR for the respondent

Coram:

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

Final Order Nos. 51293 – 51296 /2018

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

The present appeals have been filed against the Order-in-Original No. 27/2015, 37-38/2016 dated 18.08.2015 & 26.08.2016 respectively. The department has also filed the cross appeal against order No. 27/2015 dated 18.08.2015.

2. Brief facts of the case are that the appellant has established a unit for the manufacture of thermocol block, thermocol sheet and thermocol moulding in Uttarakhand. The appellant claims area based exemption under Notification No. 50/2003-CE dated 10.06.2003 as amended from time to time, but the same was denied. Being aggrieved, the present (cross) appeals have been filed.

3. With this background, we heard Sh. Pawan Shree Agarwal, ld. Counsel for the assessee and Sh. S. K. Bansal, ld. AR for the Revenue.

4. After hearing both the parties and on perusal of record, it appears that the factory of the assessee was inspected by the officers of Central Excise Department on 09.04.2010 and they found that the factory was not functioning. The statements of Sh. Sunil Garg, Director and Sh. G.P. Khanduri, employees were recorded during the course of inspection. The department is of the view that on the cut of date i.e. 31.03.2010, there was no production in the factory. So, the appellant was not entitled for the claim of area based exemption. On the other hand, the claim of the assessee is that the commercial production in the factory was commenced on 30.03.2010, i.e. prior to the cut off date. It is further claimed that on 09.04.2010 the boiler was being repaired.

5. By considering the totality of facts and circumstances of the case, we examine other evidence. It appears that the appellant has obtained the certificate from the Boiler Inspector in accordance with Section 7 of the Indian Boilers Act. As per the provisions of Section 9 of the said Act, such certificate is to issue only when the boiler is ready to use. It is also seen that the

appellant has filed the VAT return for the period 01.03.2010 to 31.03.2010, the same was acknowledged by the Assistant Commissioner, Trade Tax, Roorkee. The necessary tax and VAT was already paid and the challan for the period under consideration has been produced.

6. In addition, the appellant have produced the certificate issued by the General Manager, District Industries Centre, Roorkee where the initial date of commencement of production was mentioned as 30.03.2010.

7. In view of the above additional evidence, we are inclined to take the view that the production was commenced on or before 31.03.2010 and hence, the assessee is entitled to the benefit of Notification No. 50/2003 dt. 10.06.2003.

8. So, we set aside the impugned orders and allow the appeals filed by the appellant. Cross appeal filed by the department is dismissed. Misc. applications stands disposed of accordingly.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr) Satish Chandra)
President

Pant