

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

Date of hearing/decision:19.12.2018

Excise Appeal No.50398/2014

(Arising out of Order-in-Appeal No.MRT-EXCUS-002-APP-144/13-14 dated 30.09.2013 passed by the Commissioner of Customs & Central Excise, Meerut-II)

CCE, Meerut-II

...Appellant

(Rep by Shri V.B. Jain, DR for the appellant)

Vs.

M/s.Khandelwal Industries

...Respondent

(Rep. by Shri R.M. Saxena, Advocate for the respondent)

CORAM : HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.53518/2018

Per Anil Choudhary:

The issue in this appeal is whether the exemption under Notification No.50/2003-CE was rightly denied to the respondent/assessee.

2. The brief facts are that the respondent is engaged in the manufacture & clearance of parts & accessories of automobiles falling under Chapter Heading 87. The respondent informed the Department vide letter dated nil that they have purchased all the assets including plant & machinery of M/s.Satyam Mfg. Industries (SMI). Accordingly, ownership of the unit i.e. M/s. SMI stands transferred in their favour vide Memorandum of understanding dated 20.09.2012. It has also been informed by the appellant that as per para-3 of CBEC

Circular No.960/03/2012 dated 17.02.2012, “any change in the ownership of the unit would not jeopardize the admissibility of the exemption for the remaining part of ten year exemption period subject to the condition that the new owner exercises his option in writing to avail exemption before effecting first clearance”. Accordingly the respondent has enclosed the required declaration for availing the exemption under Notification No.50/2003-CE dated 10.06.2003 along with the above letter. The Adjudicating Authority vide his letter dated 10.05.2013 pointed out certain anomalies in the financial accounts of M/s.SMI and called for clarification of the same from the appellant. However, the adjudicating authority vide his impugned order letter dated 21.05.2013 informed the respondent that M/s.SMI have not fulfilled the basic and mandatory requirement of the Notification No.50/2003-CE dated 10.06.2003 as such the benefit of exemption under the said notification is not be admissible to the respondent. Simultaneously, they are directed to take central excise registration and to pay central excise duty on the clearance effected by them.

3. The claim for continued exemption under Notification No.50/2003-CE was denied to the respondent/assessee by the following communication dated 21.05.2013 by the Asstt. Collector :-

“Please refer to this office letter even C.No.2132 dated 10.05.2013 on the above subject.

The reply of the aforesaid letter has not been received so far in this office. In the above letter it has been alleged that no commercial production was made in your unit, the stock transfer made during the FY 2007-08 from Noida unit only was sold in the years 2010-2011 and 2011-2012. During the scrutiny of the

records filed by you, it is also found that Rudrapur unit was involved only in trading activity. Further, the fresh authenticated copy of balance sheet duly signed by any Chartered Accountant has not been filed so far.

It is also found that during the period Feb., 2010 to July, 2012, no power was consumed due to unit being closed and the said amount was demanded by the Executive Engineer for the minimum charges.

In the light of the above circumstances, it is crystal clear that M/s.Satyam Mfg. Industries have not fulfilled the basic and mandatory requirement of the Notification No.50/2003-CE dated 10.06.2003 as such the benefit of exemption under the said notification may not be admissible to you. You are therefore directed to take Central Excise Registration and to pay central excise duty on the clearances effected by you.”

4. Being aggrieved, the respondent-assessee preferred appeal before the Commissioner (Appeals), who after examining the issue, has recorded the findings as follows:-

“5.5 I find that the respondent has placed his reliance on the Balance Sheet for the year 2007-2008 and claimed that it is incorrect to say that no commercial production has been done by M/s.SMI during 2007-2008. I have gone through the copy of the Balance Sheet for the year 2007-2008 and observed that the stock transferred from Noida unit had been shown under the column of fixed assets which supports the contention of the respondent. Further, in the head of Profit & Loss Account, I find that there was sale of Rs.3,50,000/- at Rudrapur unit against the purchase of Rs.1,50,000/-. There are also the expenses shown under the head of Diesel & Wages. In view of these facts, it is evident that M/s.SMI had commenced the

commercial production during the year 2007-2008 i.e. before the cut-off date of 31.03.2010. Regarding submission of unaudited balance sheet, I find that as per Section 44AB of Income Tax Act, 1961, the audited balance sheet is required to be filled in respect of the units having total sales, turnover or gross receipts, as the case may be, in business exceed Rs.Forty Lacs in any period. The total sales/turnover of the unit during 2007-2008 to 2010-2011 was well below Rs.Forty Lacs. Impugned letter has also mentioned that during the period Feb., 2010 to July, 2012, no power was consumed due to unit being closed and the amount was demanded by the Executive Engineer for the minimum charges. In this regard, I agree with the contention of the appellant that “nothing adverse can be drawn from the minimum power consumption or no power consumption during February, 2010 to July, 2012. That the notification lays emphasis that to become entitled to exemption the unit should have commenced commercial production on or before 31.03.2010 which condition the respondent had already fulfilled. If doubts had arisen, then prompt verification should have been done at the appropriate time. Further, the letter also alleges that the respondent had not filed any declaration for availing benefit of notification no.50/2003-CE dated 10.06.2003 nor filed intimation regarding commercial production. From the documents on record, I observe that the respondent has informed the Department about the MOU signed with M/s.SMI on 21.09.2012 and consequent change in ownership. Further, they have also filed a declaration on 30.11.2012 duly acknowledged by the Department. In addition, intimation of commencement of commercial production and first clearance (Jan., 2013) has also been filed with the Department. I find that the Department did not send any officer

to verify particulars submitted, first by M/s.SMI and later by respondent (30.11.2012) when they filed their respective declarations. Further, even after declaration was submitted by M/s.SMI no objection was raised by the Department.

5.6. In the light of the above facts and legal provisions, I find that the grounds mentioned in the impugned letter dated 21.05.2013 denying exemption to the respondents are not sustainable. M/s.SMI correctly availed of the exemption provided under notification no.50/2003-CE dated 10.06.2003 and followed all requisite procedures. Change in ownership in September, 2012 was also duly intimated and the respondent (now owner) also observed the necessary procedures mandated by law. Since such change in ownership was permitted under Circular No.960/03/2012 dated 17.02.2012 which clearly held that change in ownership would not jeopardize the admissibility of exemption for the remaining period, exemption cannot be denied to the respondent.”

5. Thus, the ld. Commissioner allowed the exemption under the said notification by the impugned order-in-appeal and being aggrieved, the Revenue is in appeal.

6. Heard the parties.

7. Having considered the rival contentions, we find that grounds of appeal are as under:-

“That, as per their balance sheet total sales/clearances of finished goods affected by M/s.Satyam Manufacturing Industries during the years 2007-2008 to 2011-2012 are as under :-

<u>Financial Year</u>	<u>Sale Amount (Rs.)</u>
2007-2008	3,50,000/-
2008-2009	Nil

2009-2010	Nil
2010-2011	33,000/-
2011-2012	22,500/-

It may be noted that till the cut off date of 31.03.2010 there was a single invoice showing clearance of goods valued at Rs.3,50,000/- on 06.02.2008. There was no production /sale during the subsequent years too. That the Commissioner (Appeals) has not appreciated that such clearance of goods against a single invoice can not be treated as Commercial Production. It may be emphasized that Commercial production would mean production on commercial scale on regular basis. Meagre production shown by the party cannot be treated as 'Commercial production' as stipulated in the Notification.

3. That during the period 18.06.2007 to 08.02.2010, there was no power connection in the unit. The power connection of 20 KW was sanctioned on 09.02.2010 by Uttranchal Power Corporation Ltd., SIDCUL vide his c.no.648 dated 09.02.2010. Besides during the period Feb., 2010 to July, 2012, no power was consumed. Uttranchal Power Corporation Ltd. had demanded Rs.58,464/- for minimum charges. As, no production could be possible without the aid of power and hence there is no case for 'Commencement of Commercial Production' till the cut off date."

8. We find that the Id. Commissioner has given cogent finding that the respondent in the year 2007-2008 brought capital goods from the Noida Unit worth Rs.3.50 thousand. Further, they have shown purchase in that year worth Rs.1.50 lakh and further, they have incurred expenditure on wages and power-fuel. Further, they have also cleared the goods manufactured by them. As such, the evidence of commercial production is established. It is also held that the appellant had given due intimation to the Revenue dated 14.01.2013 along with copy of

clearance dated 4.01.2013. It has also been recorded that there is no adverse inspection report or finding to the facts as contended by the assessee, and as such, the denial of exemption is without any basis. We find that the impugned order is just and proper and there is no impropriety to interfere with the same. Accordingly, we dismiss the appeal. The respondent is entitled to consequential benefit.

(Dictated & pronounced in the open court)

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

Ckp