CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/711/2009

(Arising out of Order-in-Appeal No. 16/2009 (H-IV) CE dated 28.04.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-II), Hyderabad)

M/s Shakti Met-Dor Limited …..**Appellant(s)**

Vs.

Commissioner of Central Excise, Customs & Service Tax, Hyderabad - II …..**Respondent(s)**

Appearance
Shri Lalit Mohan Chandna, Advocate for the Appellant.
Shri Guna Ranjan, Superintendent (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 23/05/2018
Date of Decision: 23/05/2018

FINAL ORDER No. A/30604/2018

[Order per: P. Venkata Subba Rao]

The appellants are manufacturers of steel doors with frames and they sold such doors valued at Rs. 6,60,829/- to Veterinary Biological & Research Institute, Hyderabad under the

Department of Animal Husbandry, Government of Andhra Pradesh, claiming exemption in terms of Notification No. 10/1997- CE dated 01.03.1997. A Show Cause Notice was issued to the appellant seeking to deny the benefit of this notification and demanding duty on the aforesaid doors under Section 11A (1) read with Rule 8 of the Central Excise Rules, 2002. It was also proposed to demand interest and imposed penalty on the appellant. The allegation in the show cause notice is that the notification No. 10/1997 is not applicable to them as their goods do not fall under the following categories which alone are eligible for the benefit of the notification:

a) Scientific and technical instruments, apparatus, equipment (including computers);
b) Accessories, parts and consumables;
c) Computer software, Compact Disc Read Only Memory (CD-ROM), recorded magnetic tapes, microfilms, microfiches;
d) Prototypes.

It was alleged that the steel doors with frames which they are cleared do not fit any of the goods described above and the appellant also has not fulfilled the conditions specified in the column 4 in the Notification.

2. The demand was confirmed by the Adjudicating Authority vide Order-in-Original No. 13/2008 dated 31.12.2008. He also demanded interest on the duty and imposed penalties. Aggrieved,

the appellant filed an appeal with the Commissioner (Appeals) who dismissed the appeal and upheld the Order-in-Original. This appeal is against this order of Commissioner (Appeals).

3. The issues to be decided are whether the appellant is entitled to benefit of the Notification No. 10/1997 for the goods cleared by them or not and whether interest is impossible on the duty and whether penalty can be imposed on the appellant. The relevant portion of the Notification No. 10/1997 is reproduced below:

Notification: 10/97 – CE dated 01-Mar-1997

Exemption to specified goods supplied to specified institutions

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods specified in column (3) of the table below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from the whole of the duty of excise leviable thereon which is specified in the said Schedule, when supplied to the institutions specified in the corresponding entry in column (2) of the said Table, subject to the conditions specified in the corresponding entry in column (4) of the said table.

TABLE

S. No.	**Name of the Institutions**	**Description of the goods**	**Conditions**
(1)	**(2)**	**(3)**	**(4)**
1.	Public funded research institution or a university or an Indian Institute of Technology or Indian Institute of Science, Bangalore or a Regional Engineering College, other than a hospital	a) Scientific and technical instruments, apparatus, equipment (including computers); (b) Accessories and spare parts of goods specified in (a) above and consumables; (c) Computer software, Compact Disc-Read Only Memory(CD-ROM), recorded magnetic tapes, microfilms, microfiches; (d) Prototypes	i)If the institutions- a) is a public funded research institution under the administrative control of the Department of Space or Department of Atomic Energy or the Defence Research Development Organisation of the Government of India and produces a certificate to that effect from an officer not below the rank of a Deputy Secretary to the Government of India in the concerned department to the manufacturer at the time of clearance of the specified goods; or b) is registered with the Government of India in the Department of Scientific and Industrial Research and the manufacturer produces at the time of clearance, a certificate from the Head of the institution in each case, certifying that the said goods are required for research purposes only. ii) The aggregate value of prototypes received by an institution does not exceed fifty thousand rupees.

It is not in dispute that the buyer of the steel doors with frames is public funded research institute as it is an institution of Government of Andhra Pradesh. The issues in dispute are (a) whether these doors can be called Scientific and technical instruments, apparatus, equipment, accessories and spare parts of goods etc., and (b) whether the appellant has fulfilled the conditions in column (4) of the notification, in particular condition (i)(b). They have supplied the doors to the research institution which had certified that the doors were required for animal vaccine production. Later, they give another certificate that they were used for animal vaccine research purpose. The appellant claims that hence they are entitled to a benefit of the notification. The Revenue, on the other hand contends that the goods in question are not scientific and technical instruments or accessories etc., and are merely doors, supplied to the research institution and since the description of the goods does not match with the notification the appellant is not entitled to the benefit of notification. It is their further submission that, there is nothing on record to show that the buyer is registered with the Department of Scientific and Industrial Research (DSIR) of the Government of India at the time of clearance of the goods and therefore the condition specified in the notification is also not fulfilled. Thus neither the goods are covered by the notification nor is the condition fulfilled.

4. The appellant on the other hand argues that even furniture supplied to National Institute of Oceanography were given exemption. Ergonomically and specially designed modular furniture was allowed exemption under this notification by the CESTAT in the case of *Featherlite Products Pvt. Ltd., Vs. Commissioner* [2007 (208) ELT 143 (Tri.-Bang.)] which was further upheld by the Supreme Court [2016 (339) ELT A295 (S.C.)]. Similarly in the case of *Inductotherm (India) Pvt. Ltd.,* [2009 (240) ELT 565 (Tri. – Ahmd.)] exemption under this notification was allowed to heating furnace and welding parts. Similarly exemption on Air Conditioning equipment and refrigerator was allowed in the case of *Blue Star Ltd.,* [2016 (336) ELT 190 (Tri. – Mumbai)] and in the case of *Godrej Appliances Ltd.,* [2009 (236) ELT 729 (Tri. Ahmd.)]. During the hearing, the appellant reiterated the above arguments and pleaded that the impugned Order-in-Appeal be set aside and benefit of notification given to them following ratio of the aforesaid decisions.

5. The Learned Departmental Representative, reiterated the arguments made in the Order-in-Original & Order-in-Appeal and vehemently opposed the appeal. He relied on the decision of the Tribunal in the case of *H& R Johnson India Ltd.,* [2008 (232) ELT 466 (Tri- Mumbai.)] wherein, unglazed vitrified ceramic tiles were denied exemption under notification 10/97 on the ground that they are not covered by the description of the goods of notification.

6. We have considered the submissions made by both sides and perused the records. It is not in dispute steel doors with frames were supplied and the buyer is a public funded research institution. It is also not in dispute that one of the conditions of the notification is that the institution must be registered with the DSIR Government of India and such certificate was not produced during the adjudication or appeal or even during the current proceedings. As far as the goods' description is concerned, we find that in the case of National Institute of Oceanography exemption was allowed on furniture that was ergonomically and specially designed for the purpose of carrying of the research. In this case and there is nothing on record to show that these were special doors specifically designed for the research purpose. The ratio does not therefore apply. Similarly, in the case of Blue Star Ltd., (supra) and Godrej Appliances Ltd., (supra) the air conditioning equipment was supplied to the research institute specifically for the research purpose. In the case of *Tamil Nadu Petro Products Limited* [2009 (244) ELT 235 (Tri. – Chennai)] wherein, exemption was allowed on Ammonium Chloride supplied to Vikram Sarabhai Space Centre, as it was used to prepare Ammonium Per-Chlorate which was consumed in solid propellant rockets. In this case, we do not find on record, to satisfy us that the doors in question supplied to the research institute were related to research except a letter by the research institute. We therefore, find that the description of the goods do not match. We also find that, the condition of the

institute being registered that DSIR was also not fulfilled. We therefore, find the demand is sustainable and interest thereon is payable. However, there were reasonable grounds for the appellant to be under the *bonafide* belief that they were eligible to avail the exemption notification and hence we find that the penalty is liable to be set aside.

7. The appeal is partly allowed to the extent of setting aside the penalty while confirming the demand and interest. Appeal is disposed of as indicated herein above.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….