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

APPEAL No. E/30011/2016
(Arising out of ***Order-in-Original*** *No. HYD-EXCUS-002-COM-015-15-16, dated 31.08.2015 passed by CCE, C&ST, Hyderabad)*

JOYCOT INDUSTRIES .. APPELLANT(s)

Vs.

CCE, C&ST, Hyderabad-II .. RESPONDENT(s)

Appearance
Shri G. Shivadas, Sr. Adv. And Shri R. Muralidhar, Advocate for the appellant
Shri B. Guna Ranjan, Superintendent/AR for the respondent

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 07.02.2019
Date of Decision: 07.02.2019

FINAL ORDER No.A/30334/2019

[Order per: Mr. P. Venkata Subba Rao)

1. This appeal is filed by the appellant against Order-in-Original No. HYD-EXCUS-002-COM-015-15-16, dated 31.08.2015. This is the second round of appeal after the matter was remanded by Tribunal on 22.05.2014. The facts of the case are that the appellant is engaged in the manufacture of absorbent cotton wool (non medicated) which according to the appellant,

is classifiable under Chapter Heading CETH 5601 2110 and according to the Department, is classifiable under CETH 3005 9090. If the cotton is classified as claimed by the appellant, they are chargeable no duty while if the goods are classified as per the Department, they are liable to pay a duty of Rs. 65,33,079/- as per the Show Cause Notice dated 29.02.2012 (covering the period 01.04.2008 to 14.10.2010).

2. Ld. Counsel for the appellant submits that they were manufacturing ‘absorbent cotton wool IP/BP’ to various government departments for supply to their hospitals and to various dealers for supply to hospitals and medical shops in a number of packings ranging from 500 gms to 100 gms. The Office of DGCEI, Chennai visited their Unit on 14.09.2010, conducted searches and recovered documents and recorded statement of the proprietor. The appellant claimed during investigation that their products were classifiable under CETH 5601 2110 attracting nil rate of duty as per notification No. 30/2004-CE, dt. 09.07.2004 as amended and therefore they are neither charging excise duty from their customers nor paying the same to the department. Ld. Counsel submits, on pressure from the department officers, they started paying the duty ‘under protest’ after taking registration on 18.10.2010. Therefore, the demand covers only the period upto October 2010. Show Cause Notice was issued invoking the extended period of limitation which was confirmed by Ld. Commissioner vide Order-in-Original No. 01/2013-Adjn (C.E) (Commr.), dated 29.01.2013. On an appeal, the Tribunal vide final order No. 20927/2014, dated 22.05.2014 remanded the

matter back to the original authority, who, in the Denovo proceedings, again confirmed the demand. Hence this appeal.

3. Ld. Counsel for the appellant would argue that this issue of classification is no more *res-integra* as it has been settled in the case of Shanti Surgical Pvt. Ltd. vs. CCE Kanpur [2017(6)G.S.T.L. 164 (Tri.-Allahabad)]; CCE Jodhpur vs. Cotton Products India (CESTAT Delhi Final Order No. 53212/2018, dated 11.10.2018) and Jajoo Surgicals Pvt. Ltd. (in appeal No. E/51350/2018 vide final order No. A/53211/2018, dated 11.10.2018). He prays that the ratio of these orders may be followed and their product may be held as classifiable under CETH 5601 2110 and not liable to central excise duty.

4. Ld. DR reiterates the findings of the lower authority and asserts that the goods in question are classifiable under Chapter Heading CETH 3005 9090 and therefore are chargeable to duty accordingly. He prays that the appeal may be rejected.

5. We have considered the arguments on both sides and perused the records. The question is regarding classification of absorbent cotton wool which is not medicated. According to the department, it is classifiable under 3005 9090 while according to the assessee it is classifiable under CETH 5601 2110. We find that on an identical issue in the case of Shanti Surgical Pvt. Ltd (supra), the Bench of the Tribunal at Allahabad has held

that absorbent cotton wool is correctly classified under CETH 5601 2110 it being a more specific entry. This decision was also followed by the Principal Bench of the Tribunal in the case of Cotton Products India (supra) and Jajoo Surgicals Pvt. Ltd. (supra). We find that the issue has already been settled and find no reason to deviate from the decision taken by the coordinate Benches. Accordingly, we hold that 'absorbent cotton wool' manufactured by the appellant falls under CETH 5601 2110 being a more specific classification as well as a later entry in the Central Excise tariff. Accordingly, the demand for differential duty does not sustain. Consequently, the demand for interest and the penalties also do not sustain. In view of the above, we find that the impugned order is liable to be set aside and we do so.

6. The impugned order is set aside and the appeal is allowed.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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