CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Excise Appeal No. 149 of 2012

(Arising out of OIA No.79/11-CE dt.29.09.2011 passed by Commissioner of Central Excise, Hyderabad-I)

Lee Pharma Ltd
Kazipally, Jinnaram Mandal,
Medak District, AP ......**Appellant**

VERSUS

Commissioner of Central Tax
Medchal – GST
Lakdikapool, Hyderabad,
Telangana – 500 004 ......**Respondent**

Appearance
Shri Lalit Mohan Chandana, Advocate for the Appellant.
Shri A.V.L.N. Chary, AR for the Respondent.

Coram:
HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30095/2023

Date of Hearing: 25.04.2023
Date of Decision: 25.04.2023

[Order per: Bench]

The Appellants are EOU and have cleared goods to the domestic market in the month of April, 2009 by availing concession granted under Notification No. 23/2003-CE dt.21.03.2003. The approval was given by the Development Commissioner on 01.05.2009. Therefore, the Department took the view that the Appellant did not have the permission to clear the goods to the DTA during the month of April, 2009 and demanded the amounts for such clearance. After due process, an amount of Rs.3,05,773/- came to be confirmed on this count. Aggrieved by this confirmed demand the Appellant is before the Tribunal.

2. Learned Counsel appearing for the Appellant submits the letter from VSEZ on 01.05.2009. As they had to gather all the required documents till 31.03.2009 and submit the same along with CA's Certificate, it took about 15 to 20 days time to submit their request letter and finally they got the Certificate on 01.05.2009. Therefore, as they have been operating as EOU and getting such concessions regularly they should not be penalized for not

having a certificate for the Month of May, 2009. Hence he prays that the present Appeal may be allowed.

3. Learned AR submits that letter dt.01.05.2009 does not cover the period April, 2009 and therefore, the Lower Authorities were correct in confirming the demand of Rs.3,05,773/-.

4. Heard both sides and perused the documents.

5. On going through the Permission Letter No.8/EOU/-405/VSEZ/HYD-2009 dt.01.05.2009 it is seen that the Appellants have got permission for the period 01.04.2008 to 31.03.2009 which actually pertains to the past Financial Year and is not at all applicable for the Financial Year April, 2009 to March, 2010. Hence not only was the Appellant not covered for the month of April, 2009 he was not covered for the entire period from May, 2009 to March, 2010. On pointing out this, the learned Counsel submits copy of the Application filed by them before the VSEZ wherein all the documents for the period pertaining to 2008-09 were enclosed along with CA Certificate. However, by mistake in their covering letter, they have mentioned year for which permission being sought as 01.04.2008 to 31.03.2009. The VSEZ Authorities while issuing the permission letter have followed these dates because of which this mistake has occurred and they were left without cover of permission for the month of April, 2009.

6. We agree that the Appellant was not covered by the permission letter for the month of April, 2009 and as a matter of fact he was not covered for the next 11 months also since the letter dt.01.05.2009 issued by VSEZ states that the permission is granted for 01.04.2008 to 31.03.2009 only. However, it seems to be a genuine mistake on the part of the Appellant while submitting their covering letter wherein the enclosed documents pertain for the period 2008-09 and obviously the permission would have been sought for April, 2009 to March, 2010. Therefore, we feel that, in the interest of justice, an opportunity should be given to the Appellant to get this rectified and appear before the Adjudicating Authority.

7. Accordingly, we direct the Appellant to approach VSEZ Officials and provide proper documentary evidence and then if they get the letter dt.01.05.2009 amended to the count that the permission is granted for period April, 2009 to March, 2010, then the same may be produced before

the Adjudicating Authority. The Appellant can then argue afresh the demand of Rs.3,05,773/- before the Adjudicating Authority. The Adjudicating Authority will follow the principles of natural justice and give an opportunity to the Appellant to present all this documentary evidence and decide the case accordingly. Since the matter pertains to the year 2009-10, the Appellant and the Adjudicating Authority are directed to complete the entire process within four months from the date of receipt of the communication of this Order.

(Dictated and pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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