IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Excise Appeal No. E/634/2009

(Arising out of Order-in-Appeal No. 13/DB/CE(A)/GHY/09 dated-23.09.2009 passed by the Commissioner (Appeals) of Customs & Central Excise, Guwahati)

M/s. Rupajulie Tea Estate

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Guwahati

Respondent (s)

Appearance:

Mrs. C. Alam (Gupta) Advocate &
Sri S. Das, Advocate

For the Appellant (s)

Shri S. Mukhopadhyay, Supdt. (A.R.)

for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER
SHRI V. PADMANABHAN, HON'BLE TECHNICAL MEMBER

Date of Hearing/Decision :- 08.04.2019

ORDER NO. FO/75436/2019

PER SHRI V. PADMANABHAN

The present appeal is against the Order-in-Appeal No. 13/DB/CE(A)/GHY/09 dated-23.09.2009 passed by the Commissioner (Appeals) of Customs & Central Excise, Guwahati.

2. The appellant has a tea factory in district Sonitpur in Assam. The dispute is regarding the claim of the appellant for the benefit of Area Based Exemption under notification No. 33/99 dated-8/7/1999. The appellant claimed that they have increased their installed capacity by more than 25% (since 24/12/1997) by substantial expansion of their factory and hence they

were eligible for the refund under the said notification. The refund claim was made by the appellant for the period August, 1999 to March, 2013 on 18/01/2006. The Department proposed to reject the refund claim by issue of show cause notice dated 4/12/2006. The claim was rejected by the Assistant Commissioner, Central Excise, Tejpur by issue of adjudication order dated 28/01/2018. The rejection of refund claim was challenged before the Commissioner (Appeal). He upheld the rejection. Hence the present appeal.

3. The rejection of the refund claim was preceded by verification undertaken by the Jurisdictional Supdt., by visiting to the appellant's factory. The Supdt. submitted a report dated-15/01/2006 after he visited the factory in which he stated that the substantial expansion said to have been undertaken by the appellant, could not be verified and ascertained, since the assessee could not show any copy of the approved ground plan prior to the expansion nor could show any documentary evidence in support of the submission of the ground plan.

4. The issue came up before the Bench on the earlier dates of hearing i.e. on 25/2/2019 as well as on 29/3/2019. Both sides were requested on 25/2/2019 to try and procure copies of the documents relevant to the present case so that the issue may be appreciated completely. The following documents stand produced by both sides. On behalf of the appellant, the Ld. Advocate submitted copies of the following documents on the last date of hearing :-

i) the show cause notice dated 4/12/2006 proposing rejection of the refund claim;

ii) Reply to show cause notice dated 16/7/2007;

iii)Order-in-Original rejecting the refund of claim dated 28/01/2008; and

iv) Copies of the ground plan indicating lay out of machineries, section -wise pre and post expansion.

5. Ld. D.R. submitted a copy of the original file bearing No. F. No. V (18)/39/REF/BCP/05-06 in which the refund claims were processed.

6. The documents are taken on record and both sides were heard.

7. On behalf of the appellant it has been submitted as follows:

i)the Ld. Advocate drew our attention to the certificate issued by the Chartered Engineer, Shri M. Pathak. The chartered engineer has certified that the assessee has undertaken increase of installed capacity of the factory by as much as 36.2% from 400 kgs. of tea per year to 544.8 kgs. of tea per year since 24/12/1997.

ii)She referred to the comparative statements of machineries and installed capacity attached with the Chartered Engineer's certificate and submitted that the number of Fermentation Saddles increased resulting in substantial increase in the fermenting capacity. The Chartered Engineer has arrived at the increase of 36.2%; considering the capacity of Withering Trough which has remained at 544.85 Kgs. Per hour.

iii)Ld. Advocate further submitted that copies of the documents were already available with the Lower Authorities and since all the documents prescribed by the Jurisdictional Commissioner , Central Excise, Shillong vide Instruction No. 4/2002 dated 12th April, 2002 have been submitted by the appellant, they would be entitled to the benefit of notification No. 33/1999 and refunds under the said notification.

8. Ld. D.R. contended that the appellant has not carried out the expansion of installed capacity to the extent of 25% as per the requirement of the Notification No. 33/99. His submissions are summarised below:

i) He invited our attention to the Chartered Engineer's certificate and the table attached thereto. He submitted that the Chartered Engineer has considered the number of Saddles in the fermenting sections has increased to 360, resulting in increase of fermenting capacity. In this connection he drew our attention to the plan indicating the layout of the machinery sectionwise before and after the expansion of the installed capacity. This plan has been certified by the Chief Inspector of Factories on 8/12/1997 (prior to expansion on 23/8/1982).

ii) He pointed out that the layout plan prior to expansion has indicated a total of 230 number of saddles in the fermenting section prior to expansion as well as 360 after the expansion. This is at variance with what has been certified by the Chartered Engineer.

iii) He submitted that going by the lay out plan, the claim of the appellant for expansion in the number of saddles appear to be not satisfied. But he submitted that the issue may need re-verification for a final view to be taken regarding the claim of refund.

9. We have heard both sides and perused the documents including the copies of documents submitted during the course of hearing.

10. The dispute is regarding the claim of the appellant for the benefit of Area Based Exemption under Notification No. 33/99. The claim has been made under the Notification citing that installed capacity increased by more than 25% since 24/12/1997. The appellant has augmented the machineries located in certain sections of the factory. The Chartered Engineer Shri M. Pathak, after inspecting the factory, has certified the increase in installed capacity by as much as 36.2%. On the basis of such certificate, the requirement of minimum expansion of 25% appear to have been satisfied by the applicant. However, during the course of hearing, the Ld. D.R. has submitted that the certificate of Chartered Engineer appear to be at variance compared to the approved layout plan prior to and subsequent to the expansion of the unit. He has taken pains to submit that the number of saddles prior to the expansion appears to be 230 as per the approved lay out plan approved on 18/12/1997. This could indicate that there has been no increase in excess of 25% in the installed capacity since the Chartered Engineer has certified that the limiting factor in the case is not number of saddles but the capacity of Withering Trough.

11. The order passed by the Original as well as the First Appellate Authority indicates that both the authorities have proceeded to reject the claim of expansion only on the ground that the appellant has failed to submit the necessary documents supporting the claim of expansion. On the basis of the documents submitted before us, we are of the view that the claim for the benefit of Notification is required to be evaluated de novo after considering all these documents submitted before us.

12. In the result, impugned order is set aside and the issue remanded to original authority for a de novo decision in the light of above observations.

Since the matter is very old, we direct the original authority to pass the order in de novo proceedings within two months from the date of receipt of this order.

(Dictated and pronounced in the open court.)

Sd/- Sd/-

P.K. CHOUDHARY V. PADMANABHAN
(JUDICIAL MEMBER) (TECHNICAL MEMBER)

k.b/-