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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.34 of 2010

(Arising out of Order-in-Appeal No.17/SH/CE(A)/GHY/09 dated 17 September 2019 passed by Commr.(Appeals) of Customs & Central Excise, Guwahati.)

M/s. P.K.Choudhury & Sons Pvt.Ltd.
(Industrial Area (CITI), Kalapahar,
Guwahati-781016 (Assam).)

...Appellant

VERSUS

Commr. of Central Excise, Guwahati

.....Respondent

(Udyog Bikash Bhawan,
Sethi Trust Building,(5th Floor), G.S.Road,
Bhangagarh, Guwahati-05.(Assam).)

APPEARANCE

Shri Debraj Sahu (Advocate) for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI P. ANJANI KUMAR, MEMBER(TECHNICAL)
HON'BLE SHRI P. DINESHA, MEMBER(JUDICIAL)

FINAL ORDER NO. 76183/2019

DATE OF HEARING : 30 August 2019
DATE OF DECISION : 30 August 2019

P. ANJANI KUMAR :

This appeal is filed against the order of learned Commissioner(Appeals), who vide order No. 17/SH/CE(A)/GHY/09 dated 17 September 2019 has set aside the order of the original authority in extending the benefit of Notification No.32/99-CE dated 8 July 1999 to the appellants.

2. The appellants are engaged in the manufacture of polyethylene films used for packing of food products. Before the relevant date, i.e. the issue of Notification they had triple layer producing machine.

Consequent to the Notification they have added a single layer machine to their production lines. The Revenue authorities have visited the factory and after conducting necessary enquiries have issued a eligibility certificated dated 17 June 2002. On the basis of an investigation conducted by the officers, the department alleges that it was not possible for the appellants to manufacture single layer films by using the machines or machine which was existing in their factory before 24 December 2012. Such an opinion was formed by the department on the basis of the report by the manufacturer of the machine i.e. M/s.Clockner Winser India Ltd.. A show cause notice dated 2 April 2007 was issued which culminated in the impugned order.

3. Learned Counsel for the appellants submits that not only the Central Excise department, but the District Industries Centre as well as Small Scale Industries service Institution have visited the factory and certified the expansion of the installed capacity of the factory by about 50%. The issue has been in correspondence with the department also for a long time. The learned Counsel submits that the crux of the argument of the department is that the new machine installed subsequent to the issuance of area based Notification did not result in the increase or expansion of the installed capacity inasmuch as the machines already installed were also capable of manufacturing single layer film. The department contends that it was the appellant's own averment that the said machine was not put to use for manufacture of multi-layer film only due to commercial considerations of the cost involved. However, the report given by the manufacturer negates the stand taken by the appellants. Learned Counsel per contra submits that Central Board of Excise & Customs vide Circular No.912/02/2010-CX have clarified that when units increases the installed capacity of the products they are already manufacturing the benefit of exemption Notification will be available and in case they start production of a completely new product, the same may not be treated as expansion of the installed capacity.

4. Learned Authorized Representative for the department reiterates the findings of the Order-in-Original and submits that learned Commissioner has rightly upheld that the eligibility certificate issued by the lower authorities was neither a necessary condition nor a requirement for the availment of benefit of Notification.

5. Heard both sides and perused the records of the case.

6. We find that either with the single layer machine or with the multi-layer machine, the product manufactured by the appellants is one and the same inasmuch as both fall under the same Tariff Heading of Central Excise Tariff Act i.e. under 3920.32. It is not the case of the department that the appellants have introduced a new product line and claimed the exemption Notification and also it is not the case of the department that the appellants have stopped using the old machines and have carried production with the help of new machine only so as to show the expansion only on paper. We find that the appellants have increased the production capacity of the polyester film they have been manufacturing by installing the machine as also corroborated by the certificates given by the other authorities. Though the learned Authorized Representative for the department has submitted that certificates in no case by no way confer a right to the appellants for the benefit of the Notification. We find that the certificates though not an essential condition would suddenly throw light on the type of expansion undertaken by the appellants. On going through the certificates we find that annual production capacity of the films has increased and therefore we find that the appellants are eligible for the said exemption. It is pertinent to note that as contended by the learned Counsel for the appellants CBEC vide Circular cited above has clarified at para 4 that –

> "4. The matter has been examined. The exemption notification is applicable to the specified goods. Therefore, the condition of substantial expansion should also be applicable to the specified goods only. Therefore, it is clarified that only when the substantial expansion of the installed capacity of the specified goods is undertaken, then only the benefit of notification would

be applicable. To illustrate, if a unit is making tobacco product (say-gutkha, a non-specified goods, which is not allowed benefit of exemption) and also iron and steel articles (specified goods, which are lowed benefit of exemption), in that case, only when units increase installed capacity of iron and steel articles by 25%, benefit would be available. But if it increases production of gutkha by 100%, then it would not get benefit."

7. We find that the facts of the case are squarely covered by the Notification and Circular and therefore the appellants are eligible to avail the benefit under Notification No.32/99-CE dated 8 July 1999.

8. In the result we allow the appeal and set aside the impugned order with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Sd/
(P. DINESHA)
MEMBER (JUDICIAL)

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