IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No.56 of 2010

(Arising out of Order-in-Appeal No.15/GHY/CE(A)/GHY/09 dated 17.12.2009 passed by Commr. of Central Excise & Customs (Appeals), Guwahati)

M/s Frontier Foam Products (P) Ltd.
Bamunimaidan Industrial Area, P.O.Bamunimaidan, Guwahati-781021

Appellant

VERSUS

Commr. of Central Exicse & Customs, Guwahati
Nilmani Phukan Path, Christian Basti, Guwahati

Respondent

APPERANCE :

Shri Debraj Sahu, Advocate for the Appellant
Shri T.Mondal, Authorized Representative for the Appellant

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.C. J. MATHEWS, MEMBER (TECHNICAL)

FINAL ORDER NO.77086/2019

DATE OF HEARING : 26.09.2019
DATE OF DECISION : 26.09.2019

PER P.K.CHOUDHARY :

The facts of the case in brief are that the Appellant-company was initially engaged in the manufacturing of latex foam. However, subsequently, the Appellant started manufacturing Moulded PU Foam with 13 Nos. of moulds in various sizes and started commercial production in October 2004. The Appellant underwent expansion of its installed capacity (w.e.f. 1st April 2006) in its Mould section by adding 55 Moulds of various sizes suitable for buses' and railway seats and the production capacity was enhanced to 19,000 pcs. The Appellant's unit is located within the notified area declared under Notification No. 32/99-CE dated 8th July 1999 and therefore, is eligible for grant of exemption by way of refund of duty paid out of Current Account for a period not exceeding 10 years from the date of its expansion in terms of the said Notification.

2. Accordingly, the Appellant applied for refund of the Central Excise Duty paid for the period from May 2006 to March 2008, amounting to Rs. 1,93,942/-. In support of their claim, the Appellant submitted the following documents before the Adjudicating Authority:

- Invoices of moulds purchased
- Eligibility certificate for expansion/modernisation from Directorate of Industries & Commerce, Govt. of Assam, Guwahati showing date of commercial production after expansion w.e.f. 01st April 2006.
- Ground plan before and after expansion
- Chartered Accountant's certificate for investment before and after expansion
- Particulars of employees
- Deed of agreement between the Appellant and Assam Small Industries Development Corporation Ltd.
- Chartered Engineer's certificate on capacity assessment
- Lease deed with Assam Small Industries Development Corporation Ltd.

3. The Adjudicating Authority rejected the refund claim of the Appellant on the ground that the expansion undertaken by the Appellant has not resulted in the enhancement of installed capacity in terms of para 3(b) of Notification No. 32/99-CE dated 8th July 1999 and hence, the Appellant is ineligible for the benefit of the said notification. On appeal, the Commissioner (Appeals) upheld the order passed by the Adjudicating Authority. Hence, the present appeal before this Tribunal.

On behalf of the Appellant, it was submitted that the Department has erred in interpreting the law and the conditions envisaged in the said notification. They have contended that a notification promoting industrial growth and development ought to be considered liberally so as to advance the motive of such notification. The Appellant further submitted that the Adjudicating Authority had failed to consider the guidelines prescribed vide Circular No. 772/5/2004 dated 21st January 2004, wherein the Board had issued a clarification in respect of substantial expansion with respect to Area based exemption notifications. The Appellant contended that the said guidelines were squarely applicable to this case. The Appellant further submitted that the conditions under clause 3(b) of the said notification emphasise on substantial expansion of the unit with a view to encourage industrial units in the North East region of the country for the purpose of industrial development.

4. The Ld. AR reiterated the observations of the Adjudicating Authority and the First Appellate Authority.

5. Heard both sides and perused the appeal records.

6. On perusal of the said notification, we find that para 3(b) of the said notification suggests that in order to be eligible to avail the exemption, there must be substantial expansion by way of increase in installed capacity by not less than twenty five per cent on or after 24th December 1997. Further, the eligibility criteria for the said notification are two-fold viz. i) that the unit must be a new unit commencing its commercial production after 27th December 1997 or an existing unit which has undergone expansion of its installed capacity by not less than 25% of its existing capacity, ii) the unit must be located in the are notified under the Annexure to the said notification.

We find that *prima facie*, the Appellant seems to be eligible to apply for the benefit of the said notification. However, we find that the Adjudicating Authority has, from the Chartered Engineer's certificate, concluded that the Chartered Engineer had assessed the production capacity before expansion at 19.11% and therefore, the expansion being claimed by the Appellant does not meet the requirement under the said notification. However, we find that the said conclusion has not been substantiated with the evidence available on record.

Therefore, we are of the view that the matter ought to be remanded to the Adjudicating Authority to pass an order after considering the submissions made by the assessee. In view thereof, the appeal is allowed by way of remand.

(Operative part of order was pronounced in the Open Court)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(C.J.Mathews)
Member (Technical)

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