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

Excise Appeal No. 546 of 2012

(Arising out of the Order-in-Appeal No. 13/GHY/CE(A)/GHY/12 dated 06.06.2012 passed by Commissioner, Customs & Central Excise, (Appeals), Guwahati.)

M/s Purbanchal Enterprise Pvt. Ltd.,
EPIP, Amingaon, Guwahati-781031.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Guwahati.
Customs House, Nilomani Phukan Path, Christian Basti, Guwahati-781005.

. ...**Respondent(s)**

APPERANCE :
Shri Sanjeev Das, Chartered Accountant for the Appellant
Shri K. Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...76328/2023

DATE OF HEARING : 03.08.2023
DATE OF DECISION : 03.08.2023

PER K. ANPAZHAKAN :

The facts of the case in brief are that the Appellant is having their factory located at Export Promotion Industrial park Complex (EPIP), AIDC Complex, Guwahati, which is an industrial area. They were engaged in the manufacture of excisable goods, viz. Seat/Plastic Moulded Furniture/Tableware/Kitchenware/Toilet Articles of Plastics and cow-back Chair with Arms, etc. claiming refund of the excise duty paid in cash, in respect of their final products, in terms of the Notification No. 32/99-CE dated 08.07.99, as amended. They have filed a claim for refund of the duty paid through PLA amounting to Rs.25,567/- during the month of September, 2009, after debiting Rs 6,30,160/- from Cenvat credit account, as envisaged in the said Notification. The Lower Authority has sanctioned refund of Rs.25,567/-.

2. Being aggrieved, the Appellant preferred an Appeal before the Commissioner (Appeals) urging to declare the date of commencement of commercial production of the Unit to be 11.04. 2007 instead of 08.11.02, as mentioned in the impugned Order. They contended that the lower authority has committed an error in interpreting the conditions of Notification No. 20/07-CE dated 25.04.07. The Contention of the Appellant before the Commissioner (Appeals) was that their unit is a New Industrial Unit in terms of Notification 20/2007-CE dated 25.04.2007 and commenced commercial production w.e.f.11.04.2007.

3. The issue was verified by the Assistant Commissioner and it was reported that the Appellant's factory was located at EPIP, Amingaon for manufacturing of the finished product wax emulsion, for which they had been availing of exemption in terms of the Notification No 32/99-CE. The Appellant has surrendered their Central Excise Registration on 12.06.06. On the same premises, they have applied for a fresh Registration for manufacture of plastic furniture, which was granted w.e.f.11.04.2007. It is seen that the location of the factory as well the PAN numbers all remained same. However, the ownership of the factory got changed and they started manufacturing a new product. The contention of the Appellant is that the change of the management and the change of the product manufactured therein would amount to commencement of a new industrial unit. The department was of the view that mere change in management and change in product alone not sufficient to consider that a new industrial unit eligible for the exemption provided under the new notification 20/2007 dated 25.04.2007 has come into existence. Further, the Appellant has never raised this issue before the lower authority. They have filed a refund claim under the erstwhile Notification 32/99-CE availed by them in terms of their earlier Registration. After sanctioning of the refund as claimed by them, they filed appeal before the

Commissioner (Appeals) on a ground which was never raised before the lower authority. Accordingly, the Commissioner (Appeals) rejected their appeal vide O-i-A dated 06.06.2012. The present appeal has been filed by the Appellant against this impugned order.

4. In their grounds of appeal, the Appellant made the following submissions:

(i) They have started manufacturing plastic furniture, at the same premises where wax emulsion was manufactured earlier. The ownership and control of the factory got changed and they have taken a fresh central excise registration w.e.f 11.04.2007 after surrendering the old registration on 12.06.2006. The issue of fresh registration by the department for a totally new product for which commercial production was commenced on 11.04.2007, is enough to consider that a new industrial unit has come up in the same premises. Accordingly, they contended that they are entitled to claim the benefit of the new Notification 20/2007 dated 25.04.2007.

(ii) The name of the company, location of the factory as well as its PAN Code all remained the same. But, there was a change in the ownership and control of the factory. After change of ownership, the factory started manufacturing a new item. Proper verification was made before ascertaining the eligibility of the Appellant for the said Notification. On scrutiny of records, it was found that the management of the factory as well as description of the products manufactured were changed during 2006 and 2007, for which they obtained a fresh Central Excise Registration. The unit had been availing exemption in terms of Notification32/99-CE, w.e.f. 08.11.02 and they have not been rendered ineligible for exemption after 11.04.07. As such, they are entitled to claim the benefit of the new Notification 20/2007 dated 25.04.2007, with effect from the date of commencement of commercial production of the new product, on 11.04.2207. Accordingly, they prayed for allowing the benefit of

Notification 20/2007-CE dated 25.04.2007, by treating it as a new unit which commenced commercial production on 11.04.2007.

5. The Ld. A.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. We observe that the questions which arise for determination in the instant appeal are as follows:

(i) Whether the Appellant have claimed the benefit of the said later Notification 20/2007-CE dated 25.04.2007, and eligible for its benefit?

(ii) Whether the Appellant has started a new industrial unit and commenced its commercial production on 11.04.2007?

8. We observe that the present issue originated from filing of a refund claim by the Appellant for an amount of Rs.25,567/- during the month of September, 2009, after debiting Rs 6,30,160/- from their Cenvat credit account, and claimed the benefit under the Notification 32/99-CE . The Lower Authority has sanctioned refund of Rs.25,567/ as claimed by them-. Thus, the Appellant has no grievance against the refund claim, which was sanctioned as sought by them. The Appeal was filed before the Commissioner (Appeals) on a totally new ground, urging him to declare the date of commencement of commercial production of the Unit to be April, 2007 instead of 08.11.02.

9. We observe that the Appellant has been availing the benefit of exemption notification 32/99-CE and filing refund claim under the said notification. The new registration was taken under the old name with the same PAN number. The ownership and control has changed. We observe that the change in ownership and control alone not sufficient to consider them as a new industrial unit, for the purpose of availing the benefit of the notification 20/2007-CE dated 25.04.2007.We observe that the Appellant has taken a new registration after surrendering the old one and started manufacturing a new product. This

issue was not before the lower authority. Accordingly, the Commissioner (Appeals) has rightly rejected their appeal.

10. We observe that the Appellant has filed a refund in terms of Notification 32/99-CE dated 8/7/99, which was sanctioned as claimed by them. Hence, for all intents and purposes, it is clearly evident and beyond doubt that they have sought the benefit of the said Notification alone from the Lower Authority and not the benefit of any other Notification, including the said later Notification 20/2007-CE dated 25.04.2007. Accordingly, we hold that the Appellant has not claimed the benefit of the Notification 20/2007-CE from the lower authority and hence, they are not eligible to avail the benefit of this notification. Hence, answer to the question (i) in para 7 supra is negative.

10. Regarding the claim of the Appellant that they have set up a new industrial unit, w.e.f.11.04.2007, we observe that the Appellant has been availing the benefit of the exemption notification 32/99-CE and claiming refund as envisaged in the said notification, w.e.f. 08.11.2002 . The benefit of this notification is valid for a period of 10 years. Thus, even after change of management and product line in the unit, they continued to avail the benefit of the same notification from the earlier date of commencement of commercial production ie, w.e.f. 08.11.2002. Just because there is a change in the management and product line within the same factory, it cannot be called a new unit which commenced its production w.e.f.11.04.2007. The benefit of the exemption under notification 32/99-CE was given to a new unit or an existing unit which has undertaken 25% installed capacity on or after 24.12.1997. The new notification 20/2007 also has similar clauses to be fulfilled for considering a unit set up in the specified area as a new industrial unit under this notification. The relevant paras in the notification 20/2007-CE, are reproduced below:

11. The provisions of Para 5(a) and (b) of the said later Notification are reproduced below.

"5. The exemption contained in this notification shall apply only to the following kind of units, namely;-

(a) New Industrial units which commence commercial production on or after the 1st day of April, 2007 but not later than 31st day of March, 2017.

(b) Industrial units existing before the 1st day of April, 2007 but which have undertaken substantial expansion by way of increase by not less than 25% in the value of fixed capital investment in plant and machinery for the purpose of expansion of capacity/modernization and diversification and have commenced commercial production from such expanded capacity on or after the 1st day of April, 2007 but not later than 31st day of March, 2017.

12. Thus, for considering a unit as a new unit eligible for exemption under this notification, commercial production must have been commenced after 01.04.2007 , for a new industrial unit or at least 25% addition in the value of fixed capital investment in plant and machinery for the purpose of expansion of capacity/modernization and diversification should have taken place and commercial production should have commenced from such expanded capacity on or after the 1st day of April, 2007 but not later than 31st day of March, 2017. No such verification has been undertaken on the unit claimed to be a new unit by the Appellant on account of change in the management and manufacturing a new product namely, plastic chairs from the same old premises. As the Appellants were already availing the benefit of exemption notification 32/99-CE for the unit located in the same premises, it cannot be considered that a new unit has come up in the same premises under a new

ownership. The Appellant has not applied for a new unit with proper authority to determine the new unit satisfies all conditions to consider it as a new unit. Surrendering the old central excise registration and taking a new registration alone not sufficient to consider that the Appellant has commenced a new industrial unit. Accordingly, we hold that the Appellant's unit cannot be considered as a new unit which has commenced its commercial production w.e.f.11.04.2007.

11. In view of the above discussion, we uphold the impugned order and reject the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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