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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 207 of 2011

(Arising out of Order-in-Original No. 17/SR/Commr/GHY/2010-11 dated 18.01.2011 passed by Commissioner of CGST & Central Excise, Guwahati.)

M/s Cent Ply,
(A division of Century Plyboards (I) Ltd.,
C/o Cement manufacturing Co. Ltd., Mayur Garden, 2nd Floor, Opp.-Rajiv Bhawan,
G.S. Road, Guwahati-781005 (Assam)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Guwahati,
(Sethi Trust Building, 5th Floor, GS Road, Bhangagarh,
Guwahati-781005 (Assam)

.. ...**Respondent**

APPERANCE :
Shri S. P. Sidhanta, Consultant for the Appellant
Shri K. Chowdhary, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Final Order No...76998/2024

DATE OF HEARING : 12.08.2024
DATE OF DECISION : 12.08.2024

Per R. Muralidhar :

The appellant is the manufacturer of plywood. Their unit is situated at Palasbari district, Kamrup Assam. They commenced their commercial production on 4th February 2009. The units operating in Assam are given the concession under Notification No. 20/2007-CE dated 25.04.2007. As per this notification, if the value addition is 36%, then the appellant would be eligible for refund of the amount paid by under PLA which is paid in excess of the CENVAT Credit taken by them. However, if the assessee finds that the value addition is more by over by 115% of the percentage fixed (in this case 36%) then they can request for fixing special rate for their product.

2. The appellants have filed their application for fixing special rate for their product on 24.05.2010. For filing this application on 24-05-2010, the appellant referred to the letter dated 14.05.2010 issued by the Superintendent Range-II, Guwahati, certifying that the appellant is eligible for the concession given under Notification No. 20/2007-CE dated 25.04.2007 since their unit was working with effect from 04.02.2009. The appellant had claimed in their application for fixation of new rate that the value enhancement was to the extent of 67.94%. They had also enclosed therewith the certificate issued by the Chartered Accountant to this effect. A Show Cause Notice was issued on the ground that the assessee is required to file their letter for fixation on special rate not later than by way of 30.09.2009 with condonation grantable for the delay upto 30 days from this date. The Show Cause Notice alleged that as the unit had commenced the production on 04.02.2009, the appellant should have filed their letter for fixation of special rate by 30.09.2009 whereas the application was filed on 24th May 2010 and hence it appeared that the application was hit by limitation of time. After due process, the adjudicating authority rejected the application for special rate of fixation on the ground that the appellant had filed the application belatedly.

3. Being aggrieved, the appellant is before the Tribunal.

4. The Ld. Consultant submits that the commercial production was commenced with effect from 04.02.2009 and they paid the amount

through PLA for the first time in August 2009. They were regularly filing the refund claims on a monthly basis. The first refund was sanctioned only in June 2010. Only on 14-05-2010, they received a letter from the Range Superintendent to the effect that the appellant is eligible for exemption in terms of Notification 20/07-CE dated 25.04.2007. Therefore, immediately after receipt of this letter, they have filed their application for fixation of special rate on 24.05.2010.

5. In view of these facts, the Ld. Consultant submits that there was no delay in filing their application for fixation of special rate. He prays that the impugned order may be set aside and the adjudicating authority may be directed to consider all the factual details and evidence and the Chartered Accountant's certificate for fixing the enhanced rate.

6. The Ld. AR reiterates the detailed findings given by the adjudicating authority while rejecting the application filed by the appellant. He submits that the present appeal is required to be dismissed.

7. Heard both sides, perused the appeal papers and other documentary evidence placed before us. We find that there is no dispute about the appellant's eligibility for the concession granted under Notification Number 20/07-CE dated 25.04.2007. It is on record that the appellants have commenced their production with effect from 4 February 2009 and they also started paying excess duty from PLA account from August 2009 onwards. It is also on record that the appellants were regularly filing their refund claims without waiting for

any confirmation from the Range officials as to whether the they are eligible for the concession given under this notification or not. They have been filing their application for refund from October onwards. On going through the Notification 20/2007, it is seen that the conditions stipulated are as under:

" ***Notification No. 20/2007 dated 25/04/2007***

"Notwithstanding anything contained in paragraph 2A, the manufacturer shall have the option not to avail the rates specified in the said Table and apply to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, having jurisdiction over the manufacturing unit of the manufacturer for fixation of a special rate representing the actual value addition in respect of any goods manufactured and cleared under this notification, if the manufacturer finds that the actual value addition in the production or manufacture of the said goods is at least 115 per cent of the rate specified in the said Table and for the said purpose, the manufacturer may take an application in writing to the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, not later than the 30th day of September in a financial year for determination of such special rate, stating all relevant facts including the proportion in which the material or components are used in the production or manufacture of goods:

Provided *that the Commissioner of Central Excise or the Commissioner of Customs and Central Excise, as the case may be, may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days:"*

8. A careful reading of the above conditions of the notification would clarify that the appellant is required to make their application for re-fixation of the rate latest by 30th September. After this, the commissioner has the discretion to condone the delay of 30 days. This means that the application for re-fixation should be filed latest by 30th October. In the present case, the appellant has filed the

application on 24th May 2010. This shows that the appellant has delayed filing of the appeal by almost about nine months.

9. In the impugned OIO, the adjudicating authority has given the following detailed findings reproduced paras :-

> "2. Para 3(1) of the notification provides that the manufacturer have to make application seeking special rate for value addition in writing to the Commissioner not later than the 30th September. It also further provides that, Commissioner may, if he is satisfied that the manufacturer was prevented by sufficient cause from making the application within the aforesaid time, allow such manufacturer to make the application within a further period of thirty days. The applicant submitted the application to this office on 24.05.2010 for fixation of special rate for the financial year 2009-10. The due date for submission of the application was 30.09.2009 and in any case not later than 30.10.2009.
>
> 4. I find that there was indeed delay in determining the eligibility of the unit for exemption and grant of refund for the month of August 2009 to May 2010 under the Notification 20/07-CE dated 25.4.07 (as amended) by the Assistant/ Deputy Commissioner, Central Excise, Guwahati, but I find that the applicant was regularly submitting the refund claims by 7th of next month, as stipulated in the notification ibid, without waiting for the order of eligibility for refund.
>
> 5. I find that there is no provision in the notification that the applicant should have waited for confirmation of the unit's eligibility of refund or sanction of refund by the concerned Assistant or Deputy Commissioner to file the application for special rate to the Commissioner under para 3(1) of the notification. There was no bar to the applicant in submitting the application for fixation of special rate for 2009-10 by 30th September 2009 based on the audited balance sheet of 2008-09, when he was submitting the refund claims every month on the

> reasonable belief that his unit was eligible for refund under the notification 20/07-CE dated 25.4.07 (as amended).
>
> 6. I am, therefore, not inclined to accept the applicant's contention that there was no delay in submission of the application for special rate on 24th May 2010 after getting the confirmation of eligibility for exemption on 14th May 2010 and hold that the submission of the application is hit by limitation of time and liable to be rejected."

10. After going through the above findings of the adjudicating authority, we find that he has given a very detailed finding as to why he is rejecting the application filed by the appellant. We do not see any reason to interfere with this order.

11. We find that in the case of Nalari Ferro Alloys Pvt. Ltd., Vs. Commissioner of Central Excise, Shillong-reported in 2016(337) E.L.T. 113 (Tri.-Kolkata) the Tribunal has held as under:-

> *"7. Both sides agree that the appellants were required to the their applications for claiming the benefit of said Notification by 30.09.2009. However, it is pleaded that since Auditors Certificate and balance sheet of the previous year were not ready, there had been delay in filing the application before the Commissioner, claiming special rate, under Notification No. 32/99-CE., dated 8.7.1999. The moot question, therefore, to be addressed in the present appeals is whether the Commissioner was right in rejecting the applications filed beyond the allowable limit of 30 (thirty) days from the due date of 30.09.2009 or he should have condoned the delay and accepted the applications.*
>
> *10. In the present Notification, inter alia, it is a condition that the assessee is required to file necessary application by 30th of September in the financial year and also under the first proviso to the said Notification, the Commissioner has been vested with the power to accept the application by condoning the delay to a maximum of 30 (thirty) days on finding sufficient cause for the delay. Admittedly, the second condition has not been complied*

with by the appellants. <u>Therefore, in view of the aforesaid ratios the appellants are not entitled to avail the benefit of the said Notification.</u> *(Emphasis supplied)*

12. Therefore, we dismiss the appeal filed by the appellant.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.