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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.75892 of 2014

(Arising out of Order-in-Appeal No.22/DIB/CE(A)/GHY/14 dated 19.02.2014 passed by Commissioner of Customs & Central Excise (Appeals), Guwahati)

Commr. of Central Excise & Service Tax, Dibrugarh
(P,O- C. R. Buriling-786003, Dibrugarh, Assam)

Appellant

VERSUS

M/s. GR. Engineering Pvt. Ltd.,
(C/o BCPL Fabrication Site, Lepetkata,
Dist. Dibrugarh, Assam, 786006)

Respondent

APPEARANCE :
Mr. S. Dixit, Authorized Representative for the Appellant
Mr. Mahavir Prasad Bagaria, CA for the Respondent

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

FINAL ORDER NO.77554/2024

Date of Hearing : 23 October 2024
Date of Decision: 23 October 2024

PER RAJEEV TANDON:

The Revenue has filed the impugned appeal being aggrieved by the order passed by Learned Commissioner (Appeals). The facts of the case are that the respondent set up a manufacturing unit at the fabrication site of Brahmaputra Cracker & Polymer Limited (M/s BCPL for short), Dibrugarh, Assam for manufacture of C S Columns and polymerization Reactor falling under sub-heading No. 84198910 and started commercial production after complying with the necessary statutory formalities. During the course of manufacture, the appellant did pay considerable revenue by way of Central Excise duty to the government, and subsequently filed two refund claims for an amount of Rs. 51,70,393/- on 20/12/2012 and Rs. 79,09,889/- on 10/01/2013. The said refund claims were filed in pursuance of notification no.20/07-CE dated 25.04.2007. The refund claims were however rejected by the Adjudicating Authority essentially for the reason that the respondent's factory was established at the site of BCPL and therefore, could not be considered as a new unit in terms of North East Industrial Policy, 2007. It was the contention of the Adjudicating Authority that the appellant was not entitled to benefit of the Notification No. 20/2007 dated 25th April 2007 as the objective and intention of NEIP, 2007 for development of industrial infrastructure in the North East Region, was not met with.

2. We have heard the two sides and perused the case records.

3. The Learned AR reiterates the contentions as noted in the adjudication order essentially pointing out that the respondent's unit was located on a piece of land that was not owned by them, moreover as unit did not run for a period beyond four years, it did not construe and led to promoting infrastructural development in the region.

4. Countering the arguments and as also noted from the records, the Learned Advocate points out that there was nothing in the notification, the benefit of which they had sought for, to link with the Hon'ble Prime Minister's statement made at Guwahati on October 27,1996, regarding promoting infrastructure in the region. Thus to link the present matter with the proposed industrial policy for the North Eastern Region was beyond the scope of the exemption notification and exemption benefit cannot be denied to them.

5. It is a fact on record that for promotion of north eastern region, CBEC had issued the notification referred to supra allowing exemption to goods cleared from units located in the north eastern region. The plea taken by the department that as the respondent's unit was set up on a small piece of land owned by BCPL, it cannot be considered as a new industrial unit, is purely imaginary and unsubstantiated. It is fact on record that Respondent were manufacturing highly technical products for the cracker and polymer unit located at Dibrugarh, Assam

and were given a fresh Central Excise registration certificate on 17/06/2011. This negates and refutes the department's contention of the respondent's unit not being a new unit. While it is a fact on record that the respondent's were given a piece of land for fabrication work, related to orders assigned to them by BCPL, they had to come all the way from Mumbai and set up a unit here for production of the said goods, required for the cracking unit and fabricated the same at the given premises.

6. The fact of fabrication and manufacture at the BCPL site by the respondent has not been disputed by the Revenue. It is also borne out from the records that the extent of orders received from BCPL required the respondent to complete the requisite work by November 2012. The impugned notification does not play out any contention requiring a new unit to operate for a given period. It is on record that the adjudicating authority did accept that the appellant were manufacturer of Central Excise goods and had paid duty in excess of over Rs. two crore during the material period.

7. It is also noted that the Notification No. 20/2007-CE date 25th April 2007, is an unambiguous notification incorporating a negative list of manufacturing process that are not entitled for refund. The manufacturing of CS columns and polymer reactor as produced by the respondent do not fall under the negative list. It therefore belies logic to deny the respondent the benefit of the said notification. We also note that government policies as spelt out prior to the issuance of exemption notification, cannot override the conditions enumerated in the exemption notification granted for availing any scheme of the Government like, NEIP, 2007. In fact the said notification does not even utter a whisper about its intentions nor does it mention any thing about NEIP, 2007 or its intention.

8. We also note that the adjudicating authority therefore was in complete error in reading beyond the contours of the said notification

while rejecting the refund claims that were subsequently allowed by the Commissioner (Appeals) and against which order, the revenue is now in appeal. Even otherwise, it is evident that the respondent have fulfilled directly or indirectly in stepping up the industrial activities, employment, and new investment in N. E. region.

9. This Tribunal in the case of **Goenka Woolen Mills Ltd. Vs. CCE, Shillong- 2001 (135) ELT 873 (Tri.-Kolkata**), had categorically held that there was no room for intendment while interpreting an exemption notification when there is no ambiguity in the language of the notification which is required to be interpreted strictly.

10. Further in the case of **Wyeth Lederle Ltd. Vs. Commr. of Customs Mumbai (2004 (173) ELT 0486]**, it has been held that a notification is required to be implemented as it exists and not based on assumed intention of the notification.

11. The Hon'ble Supreme Court in the case of **Collector of Central Excise, Meerut Vs. Modi Rubber Ltd. 2001 (133) ELT 515 (SC)]** had clearly held that exemption notification cannot be unduly stressed to produce unintended results in derogation of the plain language employed therein.

12. The Apex Court again the case of **Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III [2011 (270) ELT 0465 (SC)]** had stated that *'when the wordings of the notification is clear, then the plain language of the notification must be given effect to. By way of interpretation or construction, the court cannot add or substitute any word while constructing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of the notification or add or subtract words in order to grant or deny the benefit of exemption notification'.*

13. In view of the fact and proposition of law as propounded by various judicial authorities as cited supra, no additional ground can be incorporated into the notification, than what is unambiguously stated and flows from in the language deployed.

14. It is clear and as placed on record that the respondent's unit was a lone unit that existed in the region for manufacture of the impugned goods which were used as plant and machinery by BCPL, a public sector organization for setting up of its prestigious oil cracking unit at Dibrugarh, Assam. It therefore cannot be denied that the respondent did invest in the plant and machinery of the said unit in terms of the orders placed by BCPL on the respondent. As an aside, the fact of generating revenue and promoting employment in the region, can also not be disputed. It therefore cannot be denied that the respondent did contribute to the economic growth of the region. This, as earlier stated is merely mentioned as an aside, as we find nothing detrimental in allowing the refund claim of the respondent.

15. The Hon'ble Supreme Court in **Collector of Customs vs. United Electrical Industries Ltd.** [1999 (108) ELT 609] has rightly held that a notification is required to be interpreted to give it its true import and meaning and not to make it purposeless and nugatory.

16. In view of our aforesaid *findings*, we find that the appeal filed by the revenue is based on extraneous and hypothetical assumptions. The appeal filed by revenue is bereft of merits and is dismissed. The order passed by the lower authority is maintained.

(Dictated and pronounced in the open court.)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja