IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 71 of 2011

(Arising out of Order-in-Original No.39/Commissioner/Denovo/CE/KOL-V/Adjn/2010 dated 29.10.2010 passed by Commissioner of Central Excise, Kolkata)

Shri R.N.Basue **: Appellant**
344/7, N.S.C.Bose Road, Kolkata-700 047.

VERSUS

Commissioner of CGST & Central Excise, Kolkata **: Respondent**
169, A.J.C.Bose Road, Kolkata-700 014.

With

Excise Appeal No. 72 of 2011

M/s. Zeolite India Pvt.Ltd.
344/7, N.S.C.Bose Road, Kolkata-700 047.

Versus

Commissioner of CGST & Central Excise, Kolkata
169, A.J.C.Bose Road, Kolkata-700 014.

APPEARANCE:

Mr. N.K.Chowdhury, Advocate for the Appellant

Mr.P.Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76197-76198/ 2025

DATE OF HEARING :23.04.2025

DATE OF DECISION:23.04.2025

Order : [Per Shri Ashok Jindal]

The appellants are in appeal against the impugned order.

2. It is the second round of litigation. The brief facts of the case are that the appellant were engaged in manufacture of and clearance of goods namely Zeoline -200 Domestic Water Purifiers with brand name "Ferrotreat, Zib Filter & Zib Softener" and various type of water treatment plants. Appellant did

not take Central Excise Registration and factory premises of the appellant was searched on 20th June, 2000. Indian Currency was also recovered from office premises and residential premises and finished goods were also recovered which were seized on the reasonable belief that same are liable for confiscation.

3. It was alleged that the said cash of amounting to Rs. 38,76,218/- appeared to be the sale proceeds of the excisable goods already manufactured and cleared from the factory.

4. Statements of the appellant were recorded. It was alleged that the appellant produced Zeoline 200 and imported water treatment product by adding calculated quantity of demineralised water in their factory itself by ion exchange process with calcium/sodium Hypo chlorite. After some process, the solution is bottled, labeled and sealed. So, appellant has manufactured the said goods which is to be classifiable under sub heading No. 2828.90 of CETA.

5. The domestic water purifying appliance viz. 'ZIB Filter', Zeoline Ferrotreat etc. are produced in their factory by assembling various parts procured from vendors. This process of assembling results in emergence of a new product which is commercially distinct and having a distinct name, character and use and therefore, the process carried out amounts to manufacture and appears to be excisable goods.

6. The appellant also undertake erection commissioning installation of water treatment plants at site of their customers. On the basis of investigation a Show Cause Notice was issued to the appellant that the appellant is liable to pay duty on

manufacture of excisable goods during the period 1995-96 to 1999-2000 after exceeding the full exemption limit under SSI exemption notification prevailing from time to time and the cash seized and goods recovered are liable for confiscation.

7. During the course of adjudication the appellant admitted the manufacture of Zeoline 200 and assembling of domestic filters and ready to pay duty after availing SSI exemption. But with regard to water treatment plant it is the contention of the appellant that the water treatment plant comes into existence at the site of their customers and they are paid entire package for erection commissioning and installation, the same is embedded earth, therefore, it cannot be called as goods. Therefore, they are not liable to pay duty on water treatment plants.

8. The Adjudicating Authority considered the submission made by the appellant and confirmed the demand of duty of Rs. 5,94,750 for manufacture of Zeoline 200 and assembling of domestic filters and also impose penalty on the appellant but currency recovered and goods seized were released and it was held by the Adjudicating Authority, no duty was payable by the appellant for errection and installation of water treatment plants.

9. Aggrieved from the said order, both sides preferred an appeal before this Tribunal and this Tribunal vide Final Order No. A/237-238/Kol/09 dated 11.05.2009 remanded matter back to the Adjudicating Authority with the following observations:

"*After considering the submissions from both sides and perusal of the case records, we are of the view that prima facie, the Adjudicating not Commissioner* *was not correct in accepting the versions of the noticees without giving an opportunity to the Department including the officials of the DGCEI to controvert the same. Similarly, the Adjudicating Commissioner should have also passed an Order in respect of the demand of interest which was claimed by the noticees. As such, we set aside the impugned Order to the extent appealed against by both sides, and remand the matter to the Original Authority for fresh decision. He shall take into account the Grounds of Appeals raised in both the Appeals and shall also provide an adequate opportunity of hearing to both sides before passing a fresh Order. Both the Appeals are allowed by way of remand. The Cross Objection No.48/06 also stands disposed off."*

10. In remand proceedings, the Adjudicating Authority confirmed the demand as proposed in the Show Cause Notice holding that erection commission and installation of water treatment plant are assemble in the factory premises of the appellant therefore, they are manufactured by the appellant in SKD condition. Therefore, they are liable to pay duty.

11. Aggrieved from the said order, the appellant is before us.

12. The Ld. Counsel for the appellant submits that appellant is ready to pay duty on Zeoline 200 and assemble Domestic filters. But the water treatment plant comes into existence after erection, commissioning and installation at the site of the customers which is embedded to earth, therefore, no duty is payable on water treatment plant.

13. To support this contention the appellant relied on the decision of Ion Exchange (India) Ltd versus

Commissioner of C.Ex., Chennai, 2002 (150) E.L.T 1235 (Tri-Chennai). In view of this he prayed that impugned order qua confirming the demand on assembling of water treatment plant is to be set aside.

14. On the other hand, the LD. Authorized Representative supported the impugned order and submitted that water treatment plant were assembled at the factory premises of the appellant and at the time of investigation water treatment plant in assemble was recovered in the factory premises. Therefore, the impugned order is to be affirmed.

15. Heard the parties. Considered the submissions.

16. We find that in this case the appellant apart from the activity of manufacturing of Zeoline 200 and assembling Domestic filters is also undertaking erection commissioning and installation of water treatment plant at the site of their customers. The water treatment plant is complete at the site of their customers which is embedded to earth. Therefore, the same is not a excisable goods as held by this Tribunal in the case of Ion Exchange (India) Ltd. (Supra) wherein the Tribunal observed as under:

"*6. In view of this Bench having decided in the appellant's own case by majority order holding that the process of assembly at site does not bring into existence excisable goods and are not liable to duty, therefore, the impugned orders in orders-in-original in these 27 appeals are required to be set aside by allowing the appeals. The COD application in Appeal No. E/177/02 is taken up and allowed in view of the main appeal already pending before the Tribunal and which is already listed for today for consideration.*

The stay application are also allowed in the same term, with consequential relief, if any."

17. In view of this we hold that the activity of erection commissioning and installation of water treatment plant at the site of their customers is not an excisable goods. Accordingly, no duty is payable by the appellant on the said activity.

18. For rest of the demand on Zeoline 200 and assemble Domestic filter is to be confirmed and same is directed to be recovered from the cash seized during the course of investigation alongwith interest for the intervening period and penalty is also confirmed to that extent. Rest of the demand is set aside and for rest of the demand no penalty is imposable.

19. In these terms, the appeals are disposed of.

(Operative part of the order was pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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