**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT NO.**

**Appeal No. C/253,254/2009**

(Arising out of Order-in-Appeal No.262 &263/Mumbai-III/2008 dt. 26.12.2008 passed by the Commissioner of Customs (Appeals), Mumbai-III )

**Pure & Cure Technology** : **Appellant**

**VS**

**Commissioner of Customs (Import), Nhava Sheva** : **Respondent**

**Appearance**

None for Appellant

Shri P.V.Shekhar, Jt. Commr. (A.R) for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**
**Hon'ble Mr. C.J. Mathew, Member (Technical)**

**Date of hearing : 17/10/2018**
**Date of decision : 17/10/2018**

**ORDER NO. A/87909-87910/2018**

***Per : Dr. D.M. Misra***

This is an appeal filed against Order-in-Appeal No. 262 &263/Mumbai-III/2008 dt. 26.12.2008 passed by the Commissioner of Customs (Appeals), Mumbai-III.

2. None present for the appellant. Herd the Ld. AR for the Revenue. The matter has been listed on 27.2.2018, 28.3.2018,

27.4.2018,4.6.2018, 29.6.2018, and today i.e.17.10.2018. Ld. AR for the Revenue submits that further adjournment will not yield any result. Hence, the appeal is taken up for disposal.

3. Briefly stated the facts of the case are that the appellant had filed 14 Bills of Entry during the period 2007 and 2008 declaring their imported product as membrane elements and classified the same under Chapter Heading No. 84212190 of the Customs Tariff Act,1975 and claimed benefit of Central Excise exemption Notification No. 6/2006-CE dt. 1.3.2006 (Sr. No. 8B). Alleging that the imported membrane elements classifiable under Customs Tariff Heading No.84219900 and benefit of notification is inadmissible, show cause notice was issued to the appellant on 8.2.2008 demanding differential duty of Rs.26,04,444/- under Section 28 of the Customs Act, 1962 along with interest under Section 28AB of the Customs Act, 1962. The said differential duty was latter corrected by issuing corrigendum on 22.2.2008 revising the demand to Rs.26,84,233/-. On adjudication, the demand was confirmed with interest. Aggrieved by the said order they filed an appeal before the Ld. Commissioner (Appeals), who in turn, upheld the order of the adjudicating authority and rejected their appeal. Hence, the present appeal.

4. Reiterating the findings in the impugned order, the Ld. AR for the Revenue submits that there is no dispute of the facts that the appellant had imported membrane elements as declared in the

respective Bills of Entry during the relevant period. The appellant had claimed that the said membrane elements as 'water purification equipment' classifiable under Chapter Sub-heading 84212190 of Customs Tariff Act, 1975. It is the contention of the Ld. AR that membrane elements is a component/part of the filtering equipment, as a whole and cannot be construed itself as water purification equipment. Referring to the definition of picture and membrane elements as mentioned in the impugned notice, the Ld. AR for the Revenue has submitted that the function of the membrane along with other parts of the filter equipments is meant for water purification but the imported membrane as such cannot discharge the whole functions as a filtering equipment. Therefore the benefit of exemption notification No. 6/2006 as amended (mentioned at Sr. No. 8B) of the said notification is not admissible to the appellant. It is his contention that exemption notification should be strictly construed and the burden to show that the assessee comes within the four corners of the exemption rest on the assessee himself. In support the Ld. AR for the Revenue referred to the judgment of the Hon'ble Supreme Court in the case of Commissioner of Cus. (Import), Mumbai Vs. Dilip Kumar & Company reported as 2018 (361) E.L.T. 577 (S.C.).

5. We have carefully considered the submissions advanced by the Ld. AR for the Revenue and perused the records. The short issue involved in the present appeal is whether the membrane element imported by the appellant is classifiable under CTH 84219900 as per Revenue or under CTH No. 84212190 as claimed

by the assessee and consequently eligible to the benefit of exemption notification No. 6/2006-CE dt. 1.3.2006, as amended ( Sr. No. 8B). The undisputed facts are that against the 14 bills of entry filed during the period March 2007 and January 2008. The appellant had declared the classification of the product under CTH 84212190 and availed benefit of Notification No. 6/2006-CE dt. 1.3.2006 as amended. The Entry 8B of Notification No. 6/2006-CE dt. 1.3.2006 as amended reads as follows:

**TABLE**

| (1) | (2) | (3) | (4) | (5) |
|---|---|---|---|---|
| 8B | 842121 (except 84212120 | Water purification equipment, based on following technologies:- | Nil | - |
| | | (a) Ultra-filtration Technology using poly acrylonite membranes; or<br>(b) Arsenic Removal Technology using ceramic micro-filtration membrane; or<br>(c) Reserve Osmosis Technology using thin film composite membrane (TFC); or<br>(d) Candle-less terracotta water filtration. | | |

6. A Plain reading of the said entry reveals that the products which fall under Chapter Sub-heading 842121as mentioned in Column (3) relating to the product “Water purification equipment based on the technologies” mentioned at Clause (a), (b) and (c) of the said entry is eligible to the benefit of said notification. Therefore the said notification allows exemption to water purification equipment only which are used for purification of water adopting technologies mentioned under Clause (a) to (d). Under

Clause (c), it is stated that the technology that should be adopted is "Reverse Osmosis Technology using thin composite membrane (TFC)." It is the argument of the appellant that membrane elements is used in the filter and the specific part necessary for the filtration technology, therefore, should be called as water purification equipment.

7. We find that while discarding the said argument in the impugned order, the Ld. Commissioner (Appeals) recording reasons observed that membrane no doubt play a crucial role in purifying water, but the question is one whether the membrane itself straightaway purifies the water. Then referring to the definition of equipment as defined under Oxford Dictionary, the Ld. Commissioner (Appeals) concluded that the membrane cannot be construed as water purifying equipment, accordingly not eligible to the benefit of notification. Further analyzing the classification declared by the appellant and alleged in the show cause notice, the Ld. Commissioner (Appeals) observed that the imported membrane elements merits classification under CTH 84219900 rather than 84212190 which claimed by the appellant as more specific; when the imported item was considered on article meant as purifying machinery or apparatus. We do not find any discrepancy in the observation of the Ld. Commissioner (Appeals). Hence, the same does not warrant any interference. Further we do not find merit in the contention of the appellant that the classification resorted to by the Revenue for earlier period cannot be altered subsequently and

the exemption claimed by them also cannot be denied. The appellant themselves had admitted that exemption notification to the said product was inserted w.e.f.1.3.2007 mentioning through new Sr. No. 8B where the classification of sub-heading was shown as 842121. Needless to mention to claim the benefit of an exemption, the burden lies on assessee to satisfy that their case falls within the four corners of the Notification as held by the Hon'ble Supreme Court in CC (Import) Mumbai Vs. Dilip Kumar & Company 2018 (361) ELT 577 (SC). In these circumstances, we do not find merit in the arguments of the appellant. Consequently, the impugned order is upheld and the appeal is dismissed.

(Operative portion of the order pronounced in court )

***(C.J. Mathew)***
***Member (Technical)***

***(Dr. D.M. Misra)***
***Member (Judicial)***

*SM.*