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

APPEAL No.E/752/09

(Arising out of Order-in-Appeal No.SN/92/NGP/2009 dated 05/03/2009 passed by the Commissioner of Customs & Central Excise (Appeals) Nagpur)

CCE, Nagpur, : **Appellant**

VS

Indorama Synthetics (I) Ltd. : **Respondent**

Appearance

Shri.Ajay Kumar, Asst. Comm. (AR) for Appellant
Shri.Chirag Shetty, Advocate for respondent

CORAM:

Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 01/11/2018
Date of decision : 01/11/2018

ORDER NO.A/88193/2018

Per : Shri P. Anjani Kumar

1. This is departmental appeal filed against the order-in-appeal No.SN/92/NGP/2009 dated 05/03/2009 passed by the Commissioner of Customs & Central Excise (Appeals) Nagpur.

2. The issue involved is whether National Calamity Contingent Duty (NCCD) is required to be paid on the Polyester Filament Yarn (POY), which is removed for capital consumption by the appellants. The Commissioner (Appeal) has relied upon the Board Circular

No.641/32/2002-CX dated 26/06/2002, which clarified that NCCD is also an excise duty.

3. Ld. AR has reiterated the ground of appeal and relied upon the following cases, wherein it was held that NCCD is payable as it is specifically excluded from the wordings of the notification. He further submits that notification has been strictly construed in view of Hon'ble Supreme Court decision in the case of *CCE, Jaipur Vs. Mewar Bartan Nirman Udyog – 2008 (231) ELT 27 (SC)*:

a) Bajaj Auto Ltd., Vs. UOI – 2017 (352) ELT 147 (Uttarakhand)

b) Unicorn Industries Vs. UOI – 2015 (324) ELT 498 (Sikkim)

c) Paras Petrofils Ltd. Vs. CCE, Surat – 2009(237) ELT 367 (Tri-Ahmed)

d) Hero Honda Motors Ltd. Vs. CCE, Meerut-I – 2017 (348) ELT 737 (Tri-Del)

4. Ld. Counsel for the appellant has relied upon the circular cited supra and the following cases:

a) Tatra Truck India Ltd. Vs. CCE – Chennai – 2008 (227) ELT 269 (Tri-Chennai)

b)CCE, Chandigarh Vs. Dharampal Satyapal – 2009 (248) ELT 810 (Tri-Del)

c) CCE, Trichy Vs. Kulvavi Tobacco Industry – 2008 (227) ELT 416 (Tri-Chennai)

d) Toyota Kirloskar Motor Pvt. Ltd. – Vs. CCE,Bangalore – 2007 (217) ELT 403 (Tri-Bang)

4.1 He also submitted that the Hon'ble Supreme Court has stayed the operation of the judgement of Sikkim High Court in the case of Unicorn Industries (supra), while issuing notice in the case *of Akshay Ispat & Ferro Alloys Pvt. Ltd. Vs. UOI – 2017 (349) ELT A-27 (SC).*

5. Heard both sides and perused the records of the case.

6. We find that the department has made a point that the notification No.67/95 does not exempt NCCD. We find that unless the same is mentioned in the notification, benefit shall not be applicable. We follow the ratio of the Hon'ble Supreme Court decision (supra) and other cases that as far as there is no ambiguity in the wordings of the notification, the same needs to be strictly construed NCCD has not been mentioned to be exempt, as such the same cannot be construed to be exempt in terms of the notification No.67/95. We find that CBEC has clarified that NCCD is also an excise duty in different context. We find that though there are diverse judgement in this matter, the majority of the decisions are in favour of the Revenue. The latest decision is Uttarakhand High Court in 2017 (352) ELT 147 (Uttarakhand), which is not reported to be stayed. Therefore, we hold that in terms of Notification No.67/95, NCCD is not exempted.

7. In the result revenue appeal is allowed.

(Pronounced and dictated in court)

(S.K.Mohanty)
Member (Judicial)

(P Anjani Kumar)
Member (Technical)

PJ