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

E/CO/195/2007
APPEAL NO.E/1019/07

(Arising out of Order-in-Appeal No.At/164/m-iii/2007 dated 08/03/2007 passed by the Commissioner of Central Excise (Appeals), Mumbai)

Crompton Greaves Ltd.,	:	**Appellant**
VS		
Commissioner of Central Excise Mumbai	:	**Respondent**

<u>Appearance</u>

ShriM.H. Patil, Advocate for Appellant
Shri Bidhandhancha, Addl. Comm. (A.R) for respondent

CORAM:

Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)
Hon'ble Shri P Anjani Kumar, Member (Technical)

Date of hearing : 24/10/2018
Date of decision : 12/02/2019

ORDER NO. A/85270/2019

Per : P Anjani Kumar

1. This appeal is directed against Order-in-Appeal No.AT/164/M-III/2007 dated 08/03/2007 passed by the Commissioner of Central Excise (Appeals), Mumbai.

2. The appellants are manufacturers of Electric Motors, Stators, Rotor and Electric Shields. The appellants were claiming exemption in respect of electric motors vide Sl.No.264 of the Notification No.5/99 for clearance under Chapter X procedure to their sister units situated

at Worli and Ahmednagar for manufacture of P.D. Pumps which were exempted from payment of duty. Show-cause notice was issued on the ground that exemption was not available to stators, rotors and Electric Shields, etc., as the final products were exempted from payment of duty. The lower authorities vide order-in-original dated 30/11/2005 has dropped the proceedings. The appellant submitted that they are filing declaration for availment of Notification No.67/95-CE dated 16/03/1995. Further, they have also availed exemption under Notification No.5/99-CE dated 28/02/1999 though it was not mentioned in the declaration.

3. The appellant submitted that the show-cause notice was issued for the period November 1999 to April 2000, whereas for the subsequent period they have filed the declaration claiming the benefit under Notification No.67/95-CE and 6/2000 (corresponding to 5/99) and a declaration was accepted by the department. Therefore, the only lapse on their part during the relevant period was to mis-out the mentioned of availment of Notification No.5/99-CE in the classification declaration. Since the lapse was of a technical nature, the same may be condoned in view of the following judgements:

(i) *Vickers Sperry of India Ltd., - 1989 (40) ELT 202*

(ii) *Kopran Chemicals Co. Ltd. – 1990 (48) ELT 569*

(iii) *Muzzaffernagar Steels – 1989 (44) ELT 552 (T)*

Wherein it was held that the benefit to which the appellants are entitled is to be extended on suo moto and that the department cannot take advantage of ignorance on the part of the appellants.

4. Learned Counsel for the appellant submits that the Additional Commissioner has given a reasoned order and the department itself had contested the CERA audit objection on the basis of which the instant show-cause notice was issued. CERA have since closed the objection. The appellants have availed the benefit of Notification No.67/95-CE was availed when said parts were used in the manufacture of motors cleared on payment of duty and they availed the benefit of Notification No.5/99-CE, when the goods are used in the manufacture of electric motors used for the PDPs or driven pumps. PDPs will not function without the stators, rotors and end shield. Therefore, they are essential part of PDPs. It is settled law that a part of part of a machine is also a part of same machine in view of the following:

(i) Mahendra Engineering Works – 1993 (67) ELT 134 (T)

(ii) KSB Pumps Ltd., - 2005 (179) ELT 370 (T)

(iii) Shriram Bearing Ltd., - 2001 (135) ELT 600 (T)

(iv) Bansal Industries Corporation -2000 (118) ELT 119 (T)

4.1 They further contended that it is a settled position of law based on the Hon'ble Supreme Court decision in the case of *Share Medical Care – 2007 (209) ELT 321 (SC)* that the benefit of exemption has to be extended even if it is not claimed by the assessee.

5. Learned AR for the Revenue reiterated the findings of order-in-appeal.

6. Heard both sides and perused the records.

7. It is seen that the original authority has dropped the case following the ratio of *KSB Pumps Ltd. – 2005 (179) ELT 370 (T)* wherein the facts are identical and following the ratio of *Mahendra Engineering Works – 1993 (67)ELT 134 (T)* in which it was held that there was no distinction between parts and sub-parts in the notification and there is no justification in denying the benefit of Notification No.64/86-CE dated 10/02/86. We find that the lower authorities has given a finding that Notification No.67/95-CE dated 16/03/1995 and Notification No.5/99-CE dated 28/02/1999 are issued separately and independently and there is no bar on any assessee for availing more than one notification as held in the case of *Hindustan Lever Ltd. – 1989 (40) ELT 388 (Tri).*

8. We find that Notification No.5/99-CE results the goods other than the following, namely:

a) Electrical stampings and laminations

b) Bearings and

c) Winding wires

Subject to fulfillment of condition listed at Sl.No.53. Conditions at Sl.No.53 reads as follows:

If the goods are used –

(i) In the manufacture of the following power driven pumps primarily designed for handling water, namely:-

(a) Centrifugal pumps (horizontal or vertical pumps);

(b) Deep tube-well turbine pumps;

(c) Submersible pumps;

(d) Axial flow and mixed flow vertical pumps; and

(ii) (a) within the factory of production; or

(b) where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules,1944, is followed.

9. On going through the Notification, it is seen that the exemption is applicable to all the goods falling under any chapter except the three listed therein at Sl.No.264. The items discussed in the impugned order are not the one which are in the excluded list. Therefore, we find that the original authority has rightly held that the appellants are eligible to avail the notification. Further, we find that the appellants have been availing the same exemption Notification No.67/95-CE and 06/2000-CE. Classification lists have been accepted by the department for further period. This being the situation, the exemption cannot be denied for the impugned period only for the reason that the appellants have not claimed the same in the declaration. Therefore, we find force in the contention of the appellant and hold that the impugned order is not maintainable.

10. In view of the above, the appeal is allowed. Cross-Objection also disposed accordingly.

(Pronounced in Court on 12/02/2019)

(Suvendu Kumar Pati)
Member (Judicial)

(P Anjani Kumar)
Member (Technical)

PJ