CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 02

Excise Appeal No. 3097 of 2006

(Arising out of Order-in-Appeal No. PII/BKS/197-198/06, dated 28.06.2006 passed by Commissioner of Central Excise (Appeals), Pune-II)

M/s Walchandnagar Industries Ltd. **.....Appellant**
Satara Road,
Satara

VERSUS

Commissioner of Central Excise, Pune II **.....Respondent**
ICE House, 41/A, Sasoon Road,
Opp. Wadia College,
Pune-411001

Appearance:

Shri S. Narayanan, Advocate for the Appellant
Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/88518 / 2018

Date of Hearing: 05.12.2018
Date of Decision: 05.12.2018

Per: S.K. MOHANTY

Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of Boilers, falling under Chapter Heading No. 84 of the Schedule to the Central Excise Tariff Act, 1985. During the disputed period, the department had gathered information that the appellant had wrongly availed the exemption benefit provided under Notification Nos. 3/2001 dated 01.03.2001 and 6/2002 dated 01.03.2002 inasmuch as parts of boilers were cleared from the factory by describing the same as "Boilers in parts". Upon detailed investigation into the matter, the department had issued the show cause notice dated

27.06.2005, calling upon the appellant to show cause as to why the benefit of exemption claimed under Notification No. 214/86 dated 25.03.1986 in respect of parts supplied to various projects shall not be denied and central excise duty along with interest shall not be recovered. The said show cause notice had also proposed for imposition of penalty on the appellant. The matter was adjudicated vide order dated 29.12.2005, wherein the proposals made in the show cause notice were confirmed. The confirmed duty amount already deposited by the appellant was appropriated in the said order. On appeal, the learned Commissioner (Appeals), Central Excise, Pune – II vide the impugned order dated 28.06.2006 has upheld the adjudged demands confirmed on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. The learned Advocate appearing for the appellant submitted that the issue with regard to claim of the benefit of Notification Nos. 3/2001 dated 01.03.2001 and 6/2002 dated 01.03.2002 is no more *res integra* in view of the order no. A/90985/2017 dated 29.11.2017 passed by this Tribunal in appeal no. E/2188/06, in the case of the appellant itself. He further submitted that the Tribunal in the said order has allowed the appeal of the appellant, holding that the proceedings initiated by the department is barred by limitation of time. The learned Advocate also submitted that the projects for whom the appellant had executed the manufacturing activities were the same in the present dispute as well as in the dispute resolved by the Tribunal vide order dated 29.11.2017. Thus, he submitted that the present demand is squarely barred by limitation of time in terms of the proviso appended to Section 11A of the Central Excise Act, 1944 inasmuch as the period in dispute was from June 2000 to September 2001, whereas the show cause notice was issued on 27.06.2005.

3. On the other hand, the learned AR appearing for Revenue has supported the findings recorded in the impugned order for sustaining the adjudged demands confirmed on the appellant.

4. Heard both sides and perused the records.

5. We find that an identical issue regarding denial of the benefit of notification dated 01.03.2001 and 01.03.2002 came up before the Tribunal in respect of the same projects for whom the appellant had executed the orders in the present dispute. Upon examination of the factual aspects, the Tribunal vide order no. A/90985/17 dated 29.11.2017 has categorically held that the benefit of both the notifications (supra) should be available to the appellant. Besides, in the said order, the Tribunal has also held that suppression of facts cannot be alleged against the appellant, justifying invocation of the extended period of limitation.

6. The show cause notice dated 27.06.2005 issued to the appellant in the present case had enclosed the annexure, mentioning the details of projects executed by the appellant. On examination of the earlier show cause notice dated 30.03.2005, we find that the same projects were also involved therein, for whom the appellant had executed the assigned job. Since, the adjudication order passed in confirming the proposed duty demand in the said notice dated 30.03.2005 was set aside by the Tribunal vide order dated 29.11.2017, it cannot be said that the department is justified in invoking the extended period of limitation for confirmation of the adjudged demands in the present case. Thus, under the facts and circumstances of the case and especially in view of the fact that the Tribunal vide order dated 29.11.2017 has allowed the appeal both on merits as well as on limitation, we are of the considered view that the charges of suppression, wilful misstatement etc., cannot be levelled against the appellant, justifying issuance of show cause notice beyond the normal period provided under Section 11A *ibid.*

7. Therefore, the impugned order upholding confirmation of the adjudged demand beyond the normal period of limitation cannot be sustained. Accordingly, after setting aside the same,

the appeal is allowed in favour of the appellant on the ground of limitation alone.

(Operative part of the pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)