CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 218 OF 2008

[Arising out of Order-in-Appeal No: P-III/PAP/101/07 dated 28th November 2007 passed by the Commissioner of Central Excise (Appeals), Pune – III.]

Ecoboard Industries Ltd
At & Post Velapur, Tal: Malshiras,
Dist: Solapur – 413 112 … ***Appellant***

versus

Commissioner of Central Excise
Pune – III
41-A ICE House, Sassoon Road, Pune - 411001 ***…Respondent***

WITH

EXCISE APPEAL NO: 86867 OF 2018

[Arising out of Order-in-Appeal No: PUN-CT-APPII-000-364-17-18 dated 26th February 2018 passed by the Commissioner (Appeals), Central Tax, Pune – II.]

Ecoboard Industries Ltd
Phaltan Pandharpur Road, Tal: Malshiras, Velapur
Dist: Solapur – 413 113 … ***Appellant***

versus

Commissioner of Central Tax
Pune – II
41-A ,ICE House, Sassoon Road, Pune - 411001 ***…Respondent***

AND

EXCISE APPEAL NO: 88303 OF 2018

[Arising out of Order-in-Appeal No: PUN-CT-APPII-000-350-17-18 dated 29th January 2018 passed by the Commissioner (Appeals), Central Tax, Pune – II.]

Ecoboard Industries Ltd
Phaltan Pandharpur Road, Tal: Malshiras, Velapur
Dist: Solapur – 413 113 … ***Appellant***

versus

Commissioner of Central Tax
Pune – II
41-A ,ICE House, Sassoon Road, Pune - 411001 ***…Respondent***

APPEARANCE:

Shri KA Sayed, Advocate for the appellant

Shri AB Kulgod, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87555-87556 / 2019

DATE OF HEARING: 11/01/2019
DATE OF DECISION: 11/01/2019

PER: C J MATHEW

These appeals of M/s Ecoboard Industries arise from confirmation of demands of ₹ 2,36,582 for the period from 4th February 2004 to 31st December 2004, ₹ 2,89,208 for the period from 1st January 2005 to 31st August 2005 and ₹ 1,12,688 for the period from 1st September 2005 to 31st March 2006 respectively under section 11A of Central Excise Act, 1944, along with appropriate interest under section 11AB of Central Excise Act, 1944, and the dismissal of their appeals *vide* order-in appeal-no. PUN-CT-APPII-000-364-17-18 dated 26th February 2018 of Commissioner of Central Tax & GST (Appeals), Pune-II, order-in-appeal no. PUN-CT-APPII-000-350-17-18 of Commissioner of Central Tax & GST (Appeals), Pune-II dated 29th January 2018 and order-in-appeal no. P III/PAP/101/07 dated 28th November 2007 of Commissioner of Central Excise (Appeals), Pune-III respectively. Penalty of ₹ 1,12,688 under rule 25 of Central Excise Rules, 2002 upheld in the last of the orders is also under challenge before us. In the other two orders, the penalty had been set aside by the first appellate authority. The second of the orders was a fresh disposal following remand directions by the Tribunal which was also taken note of in the first of the orders.

2. The appellant manufactures ‘plain particle board’, ‘pre-laminated particle board’ and ‘veeneered particle board’ classified under heading no. 4406 of Schedule to Central Excise Tariff Act, 1985. The dispute pertains to clearance of ‘particle board’ at ‘nil’ rate of duty on the claim of eligibility under notification no. 6/2002-CE dated 1st March 2002. It would appear that, in December 2003, the issue had come up before the Commissioner of Central Excise Pune-II who had held that the ‘veneer particle board’ could not be said to have been manufactured without any wood and, therefore, not eligible for exemption but relieved them of duty liability by extending the exemption available to ‘small-scale industry’ under the relevant

notification. With alteration in the scheme of exemption for 'small scale industry' requiring discharge of duty liability upon crossing the threshold limit computed by inclusion of all clearances, the jurisdictional authorities initiated proceedings as the duty liability arising from the classification determined by Commissioner of Central Excise was now recoverable.

3. It would appear that 'particle board' was subject to levy of duty from March 2003 at 8%. The exemption available under notification no. 6/2002-CE dated 1st March 2002, at serial no. 83, upon amendment effected by notification no. 12/2004-CE dated 4th February 2004 is available to goods falling under heading no. 4406/4407 of Schedule to Central Excise Tariff Act, 1985 and conforming to

> *'100% wood free plain or pre-laminated particle or fibreboard, made from sugarcane bagasse or other agro-waste'*

4. The above referred order of the jurisdictional Commissioner had directed that the 'veeneered particle board', claimed by the assessee as corresponding to sub-heading no. 440690 of Schedule to Central Excise Tariff Act, 1985, to be classified under sub-heading no. 440630 of Schedule to Central Excise Tariff Act, 1985 intended for coverage of

> *'veeneered particleboard, not having decorative veeneers on any face'*

and, thereby, not eligible for the exemption owing to presence of veneer. Following the remand of the dispute by the Tribunal back to the first appellate authority for deciding upon the classification as well as eligibility for exemption, the second of the orders impugned before us has confirmed classification under subheading no. 440690 of Schedule to Central Excise Tariff Act, 1985 as claimed by the assessee and that, upon transformation to '8 digit level' hierarchy on 1st March 2005, tariff item no. 44101190 of Schedule to Central Excise Tariff Act, 1985 would be appropriate. The first of the impugned orders has merely followed suit.

5. It is contended by Learned Counsel for the appellant that the claim for entitlement to exemption should not have been denied as the impugned goods are manufactured from bagasse and that the coating of veneer does not compromise the intent of the exemption. It was contended that the decision of the Tribunal in *Collector of Customs v. Kidwai Memorial Institute of Oncology [1991 (56) ELT 234 (Tribunal)]* laying down the principle that

> *'6….The expression 'consumable stores' has not been defined in the notification and the purpose of the notification being to remove the duty burden on approved hospital equipment, the term consumables should be construed not literally but liberally having regard to the spirit of the notification….'*

and the decision of the Hon'ble High Court of Gauhati in *MK Jokai*

Agri Plantations P Ltd v. Commissioner of Central Excise & Service Tax, Dibrugarh [2018 (361) ELT 393 (Gau)] holding that

> *'11... Also exemptions made with a beneficent object -like growth of Industry in a Region have to be liberally construed and a narrow construction of the Notification which defeats the object cannot be accepted....'*

as well as other decisions of the Tribunal on the same lines would require the acceptance of the claim for exemption.

6. Learned Authorised Representative submits that the exemption is available only for 'particle or fibreboard' that does not contain wood and that the reliance placed by the first appellate authority on the decision of the Hon'ble Supreme Court in *Hansraj Gordhandas v. H Gordmans's Dave, it would appear that the Assistant Collector [1978 AIR 755]* could not lead to any conclusion other than that arrived at therein.

7. The question that arises for consideration is whether the veeneer on particle boards would detract from the intent of the notification to exempt products made of bagasse or of agro-waste. It would appear that the product itself is 'particle board' composed of bagasse and that veeneer is a lamination over such 'particle board' on the exemption of which there is no dispute. Therefore, in the absence of any qualifying conditions, the intent of the notification to exempt usage of alternatives

is conformed with in the impugned product.

8. Accordingly, the impugned orders are set aside and appeals allowed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

**/as*