CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. III

Excise Appeal No. 85989 of 2013

(Arising out of Order-in-Appeal No. 125/126 dated 15.10.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals-IV) Mumbai-I)

Commissioner of Central Excise, Thane –II .... Appellant
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai-400028.

Versus

M/s Rel Tek Tiles India Pvt. Ltd. .... Respondent
Gut No.321, 322, 323, 381, Pargaon (Saphale),
Varai, Taluka- Palghar, Dist. Thane

Appearance:

Shri Xavier R. Mascarenhas, Authorized Representative for the Appellant

None for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85719/2023

Date of Hearing: 15.03.2023

Date of Decision: 15.03.2023

Per: Dr. Suvendu Kumar Pati

Extension of the benefit under Notification No. 10/2006-CE dated 01.03.2006 of reduced rate of duty by the Commissioner (Appeals) to the appellant, who was fastened with duty liability on alleged clearance of 'paver blocks' in the guise of 'cement solid concrete blocks' and setting aside of interest and penalty by him, has been assailed by the appellant-Department in this appeal.

2. Fact of the case, in a nut shell, is that respondent was engaged in manufacture of excisable goods viz. concrete solid blocks falling under CSH 6810.11.90 of the Central Excise Tariff Act, 1985 but Department did not agree with the classification of the respondent on the ground that it was manufacturing paver blocks in the guise of cement concrete blocks and accordingly raised duty demand for the differential amount by denying the benefit of Notification No.10/2006-CE for the period from August 2008 to March 2009. The respondent was put to show cause and suffered adjudication process whereby duty demand of Rs.24,87,823/- along with interest and equal penalty, as proposed in the show cause notice, was confirmed that was challenged by the respondent herein as appellant before the Commissioner (Appeals), who set aside the Order-in-Original placing reliance on the order passed by the CESTAT in the case of *CCE Vs. Conwood Pre-Fab Pvt. Ltd. - 2009 (241) ELT 396 (Tri. Mumbai).* Being aggrieved, respondent Department preferred this appeal before the Tribunal.

3. Learned Authorized Representative for the appellant strongly supported the reasoning and rationality available in the order passed by the original authority but conceded that the decision relied upon by the Commissioner (Appeals) are in favour of the respondent, which is being consistently followed till date.

4. No one represented the respondent and the adjournment request received at a belated stage was not placed for consideration. However, issue being settled by the Tribunal

through a series of decision referred above and recently by Mumbai Bench of CESTAT as reported in *2020-TIOL-353-CESTAT-MUM* in the case of *Ved PMC Ltd. Vs. Commissioner of Central Excise Belapur*, we prefer to record our findings in it. Relevant portion of the finding of the judgment in Ved PMC LTD. is reproduced below for a better clarity:-

> *"A close scrutiny of Notification No.10/2006-CE, would reveal that all goods covered under Chapter Heading 68 except Heading 6804, 6805, 6811, 6812, 6813 are covered in the said notification for concessional rate of duty @ 8% and not 16%. Therefore, even if it is accepted that appellant had classified the same under CH 6810 1990 and put the same in "Others" category, still the same is covered under Notification No.10/2006-CE for reduced rate of duty and comparison of the same with solid and hollow building blocks by the Commissioner (Appeals) in denying such concessional rate of duty appears to be irregular."*

5. In view of the findings of this Tribunal and in order to carry forward the judicial precedent set on the issue as well as for maintenance of consistency and predictability in the orders to be passed by this Tribunal, we dismiss the appeal of the Department and confirm the order of Commissioner (Appeals).

(Operative portion of the order pronounced in open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Saniv Srivastava)
Member (Technical)

Sinha