CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86540 of 2015

(Arising out of Order-in-Appeal No.NGP/EXCUS/000/APPL/016015-16 dated 15.04.2015 passed by the Commissioner (Appeals), Central Excise and Customs, Nagpur.)

Commissioner of Central Excise, Nashik **.... Appellant**
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Nashik- 422 002.

Versus

Laxmi Irrigation Systems Pvt. Ltd. **.... Respondent**
Plot No. 2, Sector- V, MIDC,
Ajantha Road, Jalgaon

Appearance:

Shri P.K. Acharya, Authorized Representative for the Appellant

None for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85675/2024

Date of Hearing: 01.07.2024
Date of Decision: 01.07.2024

Per: S.K. MOHANTY

Heard learned AR for the Revenue. None appeared for the respondent, despite issuance of notice by the Registry.

2. Briefly stated, the facts of the case are that the respondent herein, during the material time, was holding Central Excise registration certificate for manufacture of Tubes, Pipes, Hoses and Fittings, falling under Chapter sub-heading No. 39173990 of the Central Excise Tariff Act, 1985. On verification of the manufacturing

activities undertaken by the respondent, the jurisdictional Central Excise authorities found that though the registration certificate was obtained by the respondent on 29.04.2013 for manufacture of the excisable commodity, but they did not commence any activities and also did not supply the raw material to their job workers premises located in Pithampur. On the basis of verification of the factory premises and the records maintained by the respondent, the Department had initiated show cause proceedings against the respondent, which culminated into the adjudication order dated 05.11.2014, wherein the original authority had cancelled the registration certificate issued to the respondent on the ground that no machineries were installed and no active power connection was obtained for carrying out the manufacturing activities. On appeal against the said original order dated 05.11.2014, the learned Commissioner (Appeals) vide the impugned order dated 15.04.2015 has set aside the said original order and allowed the appeal in favour of the respondent. In support of allowing the appeal in favour of the respondent, the learned Commissioner (Appeals) has referred to the letter dated 06.03.2014 issued by the Assistant Commissioner, Central Excise and Customs, Pithampur Division, addressed to the Assistant Commissioner, Central Excise & Customs, Jalgaon Division, stating that he had no objection in undertaking manufacturing activity on job work basis, provided proper procedure laid down in the Central Excise Act, 1944 and the Rules made there under are followed by the job worker. Further, Ld. Commissioner (Appeals) has also held that as per the lease agreement dated 18.04.2013 entered into between the respondent and M/s. Radhesham Agro Industries, the respondent had paid monthly rent for the factory premises with land and machinery at the rate of Rs.10,000/- per month. Further, he has also referred to the Chartered Engineer's Certificate, wherein it has been confirmed that the machines placed in the factory premises of the respondent does not need any type of civil foundation for installation and can be installed without any civil foundation and that there is a civil foundation of size 0.078mx1.32m for installation of any heavy machine in future.

3. The provisions for issuance of the Registration Certificate are contained in Rule 9 of the erstwhile Central Excise Rules, 2002. Sub-rule (1) of Rule 9 *ibid* provides that every person, who produces, manufactures, carries on trade, holds private store room or warehouse or otherwise uses excisable goods, shall get registered. In terms Rule 9 *ibid*, the respondent herein had applied for Central Excise registration and on subjective satisfaction that the said certificate should be issued in favour of the respondent, the department had issued registration certificate. Insofar as cancellation of the registration certificate is concerned, the Central Board of Excise and Customs, in exercise of the powers conferred under Rule 9 of the Central Excise (No.2) Rules, 2001 had prescribed the conditions, safeguard and procedures for registration of a person under the said rules. In clause (6) of the conditions prescribed by CBEC, the procedure has been provided for de-registration. It has been mandated therein that every registered person, who ceases to carry on the operation for which he is registered, shall de-register himself by making a declaration in the form specified in Annexure-III and depositing his registration certificate with the Superintendent of Central Excise. In the case in hand, the respondent had not made any application before the jurisdictional Central Excise authorities for de-registration of the factory premises, for which the registration certificate was issued by the department. In Condition No.7, it has also been prescribed that a registration certificate granted under this

rule may be revoked or suspended by the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, if the holder of such certificate or any person in his employment, is found to have committed breach of any of the provisions of the Act or the Rules made thereunder. It is not the case of Revenue that the respondent had contravened or violated any of the conditions prescribed in the Central Excise Act, 1944, and the rules made thereunder. Thus under the peculiar facts and circumstances of the case, we do not find any justification on the part of the department to cancel the registration certificate issued to the respondent for carrying out the manufacturing activity in the registered premises indicated in such registration certificate.

5. Therefore, we do not find any infirmity in the impugned order, insofar as it has allowed the appeal in favour of the respondent by setting aside the original order passed by the Assistant Commissioner, Jalgaon Division. Therefore, the present appeal filed by Revenue has no merits, and accordingly, the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court on)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM