

**IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL, CHENNAI**

**Excise Appeal No.41197 of 2013**

(Arising out of Order-in-Appeal No. 186/2013 dated 26.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

**M/s. Innasimuthu Package**

**Appellant**

D. No. 2/168-169, North Street  
Kamanaickepatti  
Kovilpatti.

**Excise Appeal No.41147 of 2013**

(Arising out of Order-in-Appeal No. 127/2013 dated 22.3.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

**M/s. Maheswari Match Works**

**Appellant**

No. 58/A, Kathiresan Koil Street  
Kovilpatti, Tuticorin – 628 501.

**Excise Appeal No.41148 of 2013**

(Arising out of Order-in-Appeal No. 129/2013 dated 22.3.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

**M/s. Anusuya Match Works**

**Appellant**

No. 184/12B/12, Natarajapuram Street  
Kovilpatti, Tuticorin – 628 501.

Vs.

**Commissioner of GST & Central Excise**

**Respondent**

Central Revenue Building  
Tractor Road, NGO A Colony  
Tirunelveli – 627 007.

**APPEARANCE:**

Shri M. Kannan, Advocate for the Appellant  
Shri S. Balakumar, AC (AR) for the Respondent

**CORAM**

**Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)**  
**Hon'ble Shri M. Ajit Kumar, Member (Technical)**

Final Order Nos. **40172-40174 / 2023**

Date of Hearing: 16.03.2023  
Date of Decision: 17.03.2023

**Per Ms. Sulekha Beevi C.S.,**

The issue in all these appeals being the same, they were heard together and are disposed of by this common order.

2. In these appeals, the issue relates to applicability of exemption Notification No. 4/2006-CE dated 1.3.2006 at Sl. No. 72 which deals with the matches classifiable under Chapter 3605.00.10 or 3605.00.90. The same is extracted below:-

<b>S. No.</b>	<b>Chapter</b>	<b>Description of excisable goods</b>	<b>Rate</b>	<b>Condition</b>
72	36050010 Or 36050090	Matches or in relation to the manufacture of which none of the following processes is ordinarily carried on with the aid of power namely:- i) Frame filling ii) Dipping of splints in the composition for match iii) heads filling of boxes with matches iv) pasting to labels on match boxes, veneers or card boards; v) Packaging	Nil	

3. In terms of the above notification, the rate of duty is nil if no power is used, in any event, in anyone or more processes viz. frame filling, dipping, filling of boxes, pasting of labels or packing.

4. The learned counsel Shri M. Kannan appeared and argued for the appellants. It is submitted by the learned counsel that the appellants are independent manufactures. They purchased 'machine dipped match splints' and undertook box filling and packaging without the aid of power and then cleared at nil rate of duty. The department has issued the Show Cause Notices proposing to deny the benefit of Notification No. 4/2006-CE dated 1.3.2006. After due process of law, the adjudicating authority confirmed the demand and imposed penalty. In appeal, Commissioner (Appeals) upheld the same.

5. The learned counsel was fair enough to submit that the issue has been settled by the decision of the Tribunal vide Final Order No. 41321to 41354/2019 dated 19.11.2019 in the case of Sri Ganapathy Packing Vs. Commissioner of GST and Central Excise as reported in 2020 (2) TMI 1114 CESTAT Chennai. It is submitted that the said final order has been followed by the Tribunal in the case of M/s. Pushpa Match Works & Ors. Vs. CGST & CE, Tirunelveli vide Final Order No. 40144 to 40154/2023 dated 15.3.2023.

6. The learned AR Shri S. Balakumar appeared for the department.

7. The issue as to whether the benefit of Notification No.4/2006-CE dated 1.3.2006 is available to the appellant has been decided by the decision of the Tribunal in the case of Sri Ganapathy Packing (supra). The said order was followed in the case of Pushpa Match Works & Ors. (supra). The Tribunal observed as under:-

“7. The above view was confirmed by Third Member. The relevant portion of the order of the Third Member is extracted below:-

*“9.3 Firstly, the notification reads as: “Matches, in or in relation to the manufacture of which ....”. It is important that it is either in the manufacture or in relation to manufacture of Matches with no caveat to either of the cases.*

*9.4 Secondly, the use of the word "ordinarily" in Sl. No. 72 in the exemption notification no. 4/2006-CE is thus of particular significance and cannot be ignored. It has the effect of further widening the scope of the restrictions. The restriction that the processes must not be carried out with the aid of power applies not just to the specific goods under consideration but the same goods whenever manufactured. In other words, if the specified processes in relation to such goods are, in the ordinary course of commerce, carried out with the aid of power, the restrictions would apply and the exemption would not be available. This conclusion may be reached de hors the facts of the specific cases at hand. Thus, in order to succeed in its claim for exemption, the burden on the assessee is heavy - it must prove that the specified or listed processes are not ordinarily carried out with the aid of power and not merely that power was not used in its specific case. This burden has not been discharged.*

*9.5 I may also point out that in the case of Omega Packing relied on by the Member (Judicial), this tribunal has clearly noted that the*

*condition in the notification considered there (Notification No. 71/83-CE) was that "such containers are produced without the aid of power." Such a finding of the tribunal would indicate that the word "ordinarily" used in the present notification constitutes a material departure from the law as it then stood.*

*9.6 I may point out in passing that, presumably, the intention of the subordinate legislation was to prevent businessmen from artificially splitting up the manufacturing processes across multiple assessees to enable a larger than deserving claim for exemption.*

*10. Further, Member (Judicial) rightly points out that the notification does not require that the processes listed therein are required to be carried out by a single/same manufacturer. However, for the reasons I have given above, the converse too is not true. That is, the absence of such a requirement does not automatically entitle the assessee to the exemption.*

*11. The very heading of the Notification, i.e., GENERAL EXEMPTION NO.47 reads thus: "Exemption and effective rate of duty for SPECIFIED GOODS of chapters 25 to 49" and it applies to exempt excisable goods of the description specified in column (3) of the table. So, the conditions upon which the exemption depends is relatable not to the assessee, not the manufacture and not even the manufacturer, but only to the goods specified.*

*12. It is the case of the appellants that they have procured dipped match splints from other manufacturers who have removed such goods on payment of duty. I find that this would not make any difference since the entitlement to exemption is to be determined separately in each assessee's case. The fact that duty has been paid on some intermediate/ semi-finished goods not themselves entitled to exemption is in no manner relevant to whether exemption is to be granted at a subsequent stage to the finished goods. In any event, the cascading effect is effectively mitigated by CENVAT credit. The exemption notification must be applied only to the goods it seeks to cover.*

*13. There are also references to many Circulars/Notifications by Member (Judicial), but as is well known, each Notification/ Circular is issued in particular circumstances, in respect of particular areas or sectors, with particular intentions. I am of the view that we must be circumspect in determining their analogous applicability to other circumstances. One size does not fit all. There can be no generality.*

*14. The notification under consideration refers to many activities i.e., processes, right from procurement of inputs/raw materials, that culminate in or in relation to manufacture of Matches and hence, there is no scope to ignore/omit any process/es to claim the benefit. As regards raw materials, I need not burden myself with that issue as the exemption notification doesn't whisper anything about it, since the same is qua processes and not even qua manufacture or the manufacturer. Moreover, it is none of the processes that is ordinarily carried on with the aid of power AND NOT the manufacture per se, that is carried on with or without the aid of power. That is, the center of gravity is the 'processes' and not 'manufacture'.*

15. *In its judgment in the case of M/s. Standard Fireworks (supra), Hon'ble Supreme court has inter alia held as under: "....The Notification purports to allow exemption from duty only when in relation to the manufacture of the goods no process is ordinarily carried on with the aid of power. It is not disputed that the cutting of the steel wires or the treatment of paper is a process for the manufacture of goods in question. Since those processes were carried on with the aid of power though carried outside the factory, the requirement of the notification would not be answered so as to entitle the appellants to exemption from duty. It is not necessary to refer to any authority inasmuch as on the analysis indicated above the claim for refund appears to have been rightly rejected....".*

16. *On an overall analysis of facts in the cases on hand, I find that the above ratio decidendi squarely applies to the facts on hand and hence, I am of the opinion that the appellants are not eligible for the benefit of exemption notification No.4 ibid and accordingly, I concur with the conclusions drawn by the Member (Technical). Registry is directed to place the matter before the Division Bench for recording majority/Final Orders accordingly.*

8. As per the majority order, the demands were sustained and the assessee's appeals were dismissed. The facts and issue being identical in these appeals before us, we do not find any ground to take a different view. Applying the ratio laid down in the majority order, as above, we hold that the orders impugned in these appeals require no interference. Consequently, all these appeals are dismissed."

8. Following the decision of the Tribunal, we hold that the appellant is not eligible for the benefit of exemption of the Notification. The impugned order does not require any interference.

9. In the result, the appeals are dismissed.

(Pronounced in open court on 17.03.2023)

**(SULEKHA BEEVI C.S.)**  
Member (Judicial)

**(M. AJIT KUMAR)**  
Member (Technical)