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

Excise Appeal No.41205 of 2013

(Arising out of Order-in-Appeal No. 154/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Pushpa Match Works **Appellant**
D. No. 44-Athikondan
Lakshmipuram Post
Kovilpatti, Tuticorin – 628 501.

Excise Appeal No.41213 of 2013

(Arising out of Order-in-Appeal No. 155/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Amsarani Match Works **Appellant**
No. 4/2016, Sankarankol Main Road
Vanaramuti, Kovilapatti
Tuticorin – 628 721.

Excise Appeal No.41214 of 2013

(Arising out of Order-in-Appeal No. 149/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Selvi Packaging **Appellant**
36A, Kathiresammalai, 8th Street
Kovilpatti, Tuticorin – 628 628.

Excise Appeal No.41296 of 2013

(Arising out of Order-in-Appeal No. 160/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Esthar Match Works **Appellant**
D. No.25, Kathiresan Koil, 6th Street
Kovilpatti, Tuticorin – 628 721.

Excise Appeal No.41298 of 2013

(Arising out of Order-in-Appeal No. 164/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Jothi Match Works **Appellant**
D. No. 5/132, East Street
Salaiputhur, Inam Maniatchi
Kovilpatti, Tuticorin – 628 721.

Excise Appeal No.41299 of 2013

(Arising out of Order-in-Appeal No. 161/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Sreenivasan Match Works **Appellant**
No. 7/29, North Street
Ilayarasanendal,
Kovilpatti, Tuticorin – 628721.

Excise Appeal No.41318 of 2013

(Arising out of Order-in-Appeal No. 162/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Sri Ramaiya Match Industries **Appellant**
Door No. 252/1, Chettikurichi Road
Saravanapuram
Kovilpatti, Tuticorin – 628 721.

Excise Appeal No.41351 of 2013

(Arising out of Order-in-Appeal No. 173/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Srinivasa Match Works **Appellant**
No.114/A, main Street
K Saravanapuram
Kovilpatti, Tuticorin – 628 721.

Excise Appeal No.41354 of 2013

(Arising out of Order-in-Appeal No. 174/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Solaiammal Match Works **Appellant**
No. 9/2, East Street
Peekilipatti, Upathur Post
Kovilpatti, Tuticorin – 628 721.

Excise Appeal No.41376 of 2013

(Arising out of Order-in-Appeal No. 167/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Nandhinishri Match Works **Appellant**
D. No. 166/A, Teppakulam Street
Kovilpatti, Tuticorin – 628 721.

Excise Appeal No.41417 of 2013

(Arising out of Order-in-Appeal No. 166/2013 dated 18.4.2013 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Balaji Match Works **Appellant**
D. No. 460-A/2-4, 4th Street
North pudugramam
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
Smt. K. Komathi, ADC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Vasa Seshagiri Rao, Member (Technical)

Final Order Nos. **40144-40154 / 2023**

Date of Hearing: 02.03.2023
Date of Decision: 15.03.2023

Per Vasa Seshagiri Rao,

The appellants, as detailed above, have filed these appeals against the impugned orders confirming the demand of duties along with appropriate interest and also the imposition of penalty denying the benefit of exemption Notification No. 4/2006-CE dated 1.3.2006. As all these appeals involve a common issue, they are being 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 hereunder:-

S. No.	Chapter	Description of excisable goods	Rate	Condition
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 facts in these appeals indicate that all the appellants are independent manufacturers of matches. These appellants purchased 'machine dipped match splints' from other match splint manufacturers who were using power in the manufacture of these match splints. Then they undertook box filling and packaging without the aid of power and then cleared at nil rate of duty. Revenue issued Show Cause Notices within the normal period and cases were duly adjudicated denying the benefit of Notification No. 4/2006-CE dated 1.3.2006 as they have purchased the match splints from other manufacturers who have used the power in relation to their manufacture of these match splints. As the notification prescribes nil rate of duty for matches in or in relation to the manufacture where none of the following processes is ordinarily carried on with the aid of power namely (i) frame filling and (ii) dipping of splints in the composition for match heads (iii) filling of boxes with matches (iv) pasting of labels on match boxes and (v) packings. As the

buyer has used power in the manufacture of match splints, the nil rate of duty is not applicable to the matches manufactured and cleared by these assessees.

5. Heard learned counsel Shri M. Kannan on behalf of the appellants and learned AR Smt. K. Komathi, Additional Commissioner, for the Revenue.

6. The issue involved in these appeals has been already settled in favour of the Revenue by this Tribunal by denying exemption under Notification No. 4/2006-CE dated 1.3.2006 in the case of Sri Ganapathy Packing Vs. Commissioner of GST and Central Excise vide Final Order No. 41321to 41354/2019 dated 19.11.2019 as reported in 2020 (2) TMI 1114 CESTAT Chennai. The relevant portion of the of Member (Technical) order is reproduced below where there was disagreement with the Member (Judicial) necessitating a reference to the Third Member.

> "......
>
> A plain reading of the above notification. shows that there is no stipulation in it that all the above processes have to take place within the same factory. It also does not stipulate that the benefit is available if the power is not used by the person claiming the benefit of the exemption notification or his job workers. Therefore, the place of use of power is irrelevant. The person who uses the power is also irrelevant. The only thing that is relevant, is that the power should not. have been used in any of the. Six processes mentioned therein. It does not matter if the power is used in any - of the other processes in the manufacture of the matches, the benefit is still available as long as the power is not used in the above SIX processes. If power is used in any of the above SIX processes, then 'the benefit of the exemption _ notification is not available regardless of who used the power in that process or on whose account.
>
> 2. The assessee could either undertake the entire manufacture themselves: or outsource any of the processes to a job worker (who completes the process on account of the assessee) or they could purchase goods from a vendor (who completes the process on his own account and sells to the assessee) and then complete the remaining- processes. It is immaterial as far as the notification is

concerned which method is adopted. What is crucial 'is whether the power has been used in any of these processes.

3. In the case of Standard Fireworks dealing with a notification similar to the present notification, Hon'ble Apex Court held that benefit of the notification is not available even if the processes were undertaken outside the factory of the assessee: with- the aid of power. In that: case, the power was used by the job workers in one of the processes. In the present case, ' the power is used by the vendor in one of the processes. What is relevant for the exemption notification is whether power was used in one of the six processes and NOT who used it. The ratio of the judgment of the Hon'ble Apex Court in the case of Standard Fireworks Industries Vs. CCE [1987 (28) ELT 56 (SC)] (supra) squarely applies to the Present case inasmuch as in both cases, the notification only specified the processes in which: the power should not be used without specifying who should not be using the power in that processes and it is held that even if the power is not used in the factory of the manufacturer but it is used outside, the benefit of the exemption notification is not available.

4. To say that the exemption is. not available only if the power was not used by the assessee, one neéds to insert the words 'by the manufacturer or his job workers' in the notification and read it as Matches, in or in relation to the manufacture of which none of the following processes is ordinarily carried on with the aid of power by the assessee.

5. To hold that the exemption is not available only if the power was not used by the assessee or his job workers, one needs to insert the words the manufacturer or his job workers' in the notification and read. it as Matches, in or in relation to the manufacture of which none of the following processes is ordinarily carried on with the aid of power by the assessee or his job workers. "Such enlargement of the scope of the notification is beyond the powers of this Tribunal.

6. The Constitution of India divides the powers between Legislature, Executive and Judiciary with legislation being solely domain of the Parliament. Subordinate legislation such as this notification is made by the Government which is answerable to the Parliament. Further each and every notification is placed before the Parliament whose Committee on Subordinate Legislation scrutinises the notification and directs any changes which it feels is necessary. It is for this reason, the power of making subordinate legislation is. delegated to the Government which is answerable to the Parliament and not to other arms of the State.

7. It is therefore, not open for the Tribunal to: enlarge the scope of the notification by reading into it the additional words that do not exist. Even if it is viewed that the exemption notification can also be interpreted to mean that the power should not be used by the assessee or his job workers only, it cannot be denied that a plain reading of the exemption notification forbids the use of power in processes without reference to who undertakes the processes.

8. Over years, two different approaches were taken while interpreting the exemption notifications strict and liberal or purposive

construction. Beneficial exemption notifications have, at times been interpreted so as to serve the purpose of the exemption notification without being unduly restricted by the words of the notification. Both approaches to interpret the notifications were taken even by the Supreme Court and therefore the issue was referred to the five member Constitutional Bench of the Hon'ble Supreme Court which has finally settled the law in the case of Dilip Kumar & Co. [2018 (361) ELT 0577 (SC)] in the following words:

> *52. To sum up, we answer the reference holding as under*
>
> *(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.*
>
> *(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.*
>
> *(3) The ratio in Sun Export case (supra) is not correct and all the decisions which took similar view as in Sun Export case (supra) stands overruled.*

The ratio of the judgments of Standard Fireworks Industries vs CCE [1987 (28) ELT 56 (SC)] and Dilip Kumar & Co. [2018 (361) ELT 0577 (SC)] are binding on all courts and tribunals leaving me with no option but to conclude that the appellant assessees are not entitled to the benefit of the exemption notification.

9. It has also been canvassed on behalf of the appellants that what they are doing is mere packing of the splints into boxes and no new commodity has come into existence and there is no Chapter Note in the Central Excise Tariff to hold that packing of matches amounts to manufacture. It has also been argued that the Tariff heading indicates the standard unit as kg and not as boxes and hence there is no intention to tax matches packed in boxes. Even a child knows that the match box is not merely a packing material but it has half the chemicals required to make fire through friction. It does not take too much effort to understand that the splints and the matches in boxes are different commodities as known to the market. The standard unit indicated in the tariff does not determine whether duty is payable or not. Match boxes are countable but they can also be weighed. Simply because they can be easily counted and the standard unit indicated in the tariff is kg, it does not mean that no excise duty is payable on matches in boxes. Several other goods in the same chapter which are equally countable such as safety fuses, detonators, signalling flares etc., all have the standard unit as kg. This does not make them not dutiable.

10. It has also been argued on behalf of the appellants that with respect to an exemption notification no. 49/86-CE for footwear, CBEC issued circular No. 1/93-CX -dated 2-12-1993 indicating that the particular exemption notification is available even in cases where the suppliers of the inputs used power. Therefore, the same logic should apply to them. I find that in the first place, CBEC's circular is

binding on the department but not on the Tribunal, Secondly, the circular dealt with a different exemption notification and it cannot be treated as a binding ratio and extended to other exemption notifications. Thirdly, the circular was issued at a time when the issue of how to interpret an exemption notification was not settled by the Constitutional bench. of the Supreme Court in the case of Dilip Kumar (supra). Lastly, any clarification by the Board in the form of a Circular cannot prevail over the ruling of the Hon'ble Apex Court that the exemption notifications must be interpreted strictly with benefit of any doubt going against the assessee and in favour of the Revenue. Thus, I find that the circular relied upon does not carry the case of the appellants any further.

11. In view of the above, I find that the benefit of the exemption notification no. 4/2006-CE is not available to the assessees and the demands confirmed by the impugned orders need to be upheld and the appeals are liable to rejected."

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 assessees 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.

(Pronounced in open court on 15.3.2023)

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

(**VASA SESHAGIRI RAO**)
Member (Technical)

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