

AUTHORITY FOR ADVANCE RULINGS
(Central Excise, Customs and Service Tax)
Hotel Samrat, 4th Floor, Kautilya Marg, Chanakyapuri
New Delhi

Present:

Justice V.S. Sirpurkar (Chairman)
Shri S.S.Rana (Member)
Shri R.S.Shukla (Member)

The 11th day of March, 2016

Ruling No. AAR/CE/ 09/2016

in

Application No. AAR/44/CE/24/2014

Name & address of the applicant : M/s Lakhani Footwear Pvt. Ltd.,
Haridwar, Dehradun

Commissioners concerned : Commissioner of Customs(CE&ST)
Dehradun, E-Block, Nehru Colony,
Dehradun -248001

Present for the applicant : Shri R.Krishnan, Advocate,

Present for the Department : Shri Amresh Jain(AR)

Ruling

M/s Lakhani Footwear Private Ltd (hereinafter also referred to as applicant) operating in Plot No. 11, Sector-11, IIE, Sidcul, Haridwar are availing the area based excise duty exemption under Notification No. 50/2003-C.E. dated 10.6.2003. Applicant proposes to effect substantial expansion in the existing location by installing more than 25% additional plant and machinery and constructing new building; that thus there would be substantial expansion by 25% which qualifies as substantial expansion as per Board's Circular No. 772/5/2004 CX. dated 21.1.2004; that for this Haridwar Plant-II, applicant would obtain separate factory license and E.S.I., PF Code; that applicant proposes to separate existing works with the proposed Haridwar Plant-II by putting a wall in between the two. The existing works shall be named as Lakhani Footwear Pvt.

Ltd and the expanded capacity where they would put the additional plant and machinery and construct the building, shall be named as Lakhani Footwear Pvt. Ltd (Haridwar Plant-II) for their accounting, project monitoring and management information purposes; that they would maintain a separate series of invoices to be issued each prefixed with the letters "SE" – to indicate that the invoices pertain to clearances from the expanded capacity, though the excise return & service tax return for the unit shall be filed in consolidated manner as substantial expansion is taking place in the same plot.

2. Applicant submits that Central Board of Excise & Customs (CBEC) has clarified by its Circular No. 939/29/2010-CX dated 22.12.2010 that units which are already enjoying the duty exemption can produce new articles after the cutoff date using the same plant and machinery or by installing a new plant and machinery or capital goods and the provisions of Notification No. 50/2003-CE do not place a bar or restriction on an addition / modification in the plant and machinery or on the production of new products by eligible units after the cutoff date and during the exemption period of ten years as per the notification; that the benefit of excise duty exemption under the notifications would continue to be available to eligible industrial units.

3. Applicant submits that CBEC inter-alia has further clarified by its Circular No. 960/03/2012-CX dated 17. 02. 2012 that a unit availing exemption under the notification can even expand acquiring a plot of land adjacent to its existing premises by installing new plant / machinery and in so coming to the conclusion has reiterated the clarification in Circular No. 939/29/2010-CX dated 22.12 2010. Further, the expansion and installation of the plant and machinery is taking place in the same Khasra No. 72 & 74 for which ten year exemption has already been granted and is being availed. When even extending to adjacent plot of land is allowed, there is no reason why similar expansion within the same Khasra no. cannot be permitted.

4. Applicant has raised the following question before this Authority:

Whether the benefit of Notification No. 50/2003-C.E. dated 10.06.2003 will be available to goods manufactured from the unit i.e. PLANT-II HARIDWAR established from expansion of the existing unit.

5. Revenue inter-alia submits that the applicant is engaged in the manufacture of Footwear falling under Chapter Heading No. 64059000 since March 2010; that the premises where the benefit of Notification No. 50/2003-CE dated 10.6.2003 is already being availed and where the applicant proposes to effect the substantial expansion, are the same and one premises i.e. Plot No.11, Sector 11, SIDCUL, Haridwar; that the applicant proposes to divide existing plot into two parts by putting a wall; that after completion of Civil work at the proposed vacant space, they will name it as “Haridwar Plant-II”; that the applicant also proposes to take a separate factory license, ESI No. and P.F. Codes. Revenue submits that from the aforesaid activities of the applicant, it appears that the said “Haridwar Plant-II” cannot be termed as “expansion” of the existing unit and will be an altogether different entity from the existing unit, which is availing area based exemption under Notification No. 50/2003– CE, dated 10.6.2003. Revenue further submits that since the proposed new unit will come into existence after sun set clause i.e. after 31.3.2010, the said unit will not be eligible to enjoy the benefit of the said exemption notification and shall have to pay duty at the applicable rates.

6. It is observed that the Revenue has raised two objections. First objection is that the proposed Unit II does not fall under the category of existing unit, which has undergone substantial expansion in terms of Notification No. 50/2003-CE. Second issue raised is connected to the first issue, i.e., the proposed Unit-II will come into existence after the sunset clause i.e. after 31.03.2010, therefore said unit will not be eligible to enjoy the benefit of exemption Notification No. 50/2003-CE.

7. It is observed that the applicant submitted Intimation / Declaration dated 29.03.2010 to the Central Excise authority for setting up a new manufacturing unit in the State of Uttarakhand (earlier Uttaranchal) and availing benefit of exemption under Notification No. 50/2003-CE. The declaration shows location of unit as Khasra No. 72 and 74, Plot No. 11, Sec-11, 11E, Haridwar. Date of trial production is shown as 21.03.2010 and date of exercising option under Notification No. 50/2003-CE and date of commercial production are both shown as 26.03.2010.

8. Notification No. 50/2003-CE dated 10.06.2003 inter-alia exempts goods other than specified goods cleared from units located in areas mentioned in Annexure II and III to the Notification from whole of the duty of excise or additional duty of excise, subject to following 2 conditions

- (i) *The manufacturer who intends to avail of the exemption under this notification shall exercise his option in writing before effecting the first clearance and such option shall be effective from the date of exercise of the option and shall not be withdrawn during the remaining part of the financial year;*
- (ii) *The manufacturer shall, while exercising the option under condition (i) inform in writing to the jurisdictional Deputy Commissioner of Central Excise or Assistant Commissioner of Central Excise, as the case may be, with a copy to the Superintendent of Central Excise giving the following particulars, namely:-*
 - (a) *name and address of the manufacturer;*
 - (b) *location/location of factory/factories;*
 - (c) *description of inputs used in manufacture of specified goods;*
 - (d) *description of the specified goods produced;*
 - (e) *date on which option under this notification has been exercised;*

9. It is observed from the Intimation / Declaration filed by the applicant under Notification No. 50/2003-CE that both above conditions have been satisfied.

10. Further, clause (2) of Notification No. 50/2003-CE dated 10.06.2003 reads as under;

2. The exemption contained in this notification shall apply only to the following kinds of units, namely:-

- (a) *new industrial units set up in areas mentioned in Annexure-II and Annexure-III, which have commenced commercial production on or after the 7th day of January, 2003, but not later than the [31st day of March, 2010;]*
- (b) *Industrial units existing before the 7th day of January, 2003 in areas mentioned in Annexure-II, but which have undertaken substantial expansion by way of increase in installed capacity by not less than twenty-five per cent, on or after*

the 7th day of January, 2003, but have commenced commercial production from such expanded capacity, not later than the [31st day of March, 2010.]

11. It is observed from above that exemption benefit under 2(b) above will not be available to the applicant as the industrial unit did not exist before 07.01.2003 and it started trial production only on 21.03.2010. It is to be seen if Condition 2(a) above is satisfied by the applicant, which consists of;

- a) Whether new industrial unit is set up in areas mentioned in Annexure II and Annexure III appended to the Notification No. 50/2003-CE

It is observed that the unit is located in the area mentioned in Annexure-II to the said Notification. Therefore, this sub-condition is satisfied.

- b) Whether the unit has commenced commercial production on or after 07.01.2003 but not later than 31.03.2010.

It is noticed from the Intimation/ Declaration dated 29.03.2010 under Notification No. 50/2003-CE, submitted by the applicant that they commenced commercial production on 26.03.2010. Since it was a new unit, it could not have started production before 07.01.2003. Therefore, this sub-condition is also met by the applicant.

12. Applicant has relied on Circular No. 939/29/2010-CX dated 22.12.2010 issued by CBEC regarding scope of Notification No. 50/2003-CE. Relevant portion of the Circular is reproduced as under:

Representations have been received from Trade and Industry Associations seeking clarification on the availability of the exemption benefit under these notifications in the following situations:

- (i) *Where a unit starts producing some new products after the cut-off date using plant and machinery installed up to the said cut-off date and without any further addition to the plant and machinery.*
- (ii) *Where the installed capacity in a particular unit is upgraded after the cut-off date, so as to increase the efficiency of the machinery by installing ancillary machines or replacement of some parts etc but in such a way that it does not lead to increase in capacity of production.*
- (i) *Where new dosage forms are manufactured after the cut-off date on the same line of production with the same machinery.*

(ii) *Where a unit manufactures a new product by installing fresh plant, machinery or capital goods after the cut-off date.*

Board has examined the matter. Under the said notifications, any new unit set up or an existing unit which has undergone substantial expansion that commences commercial production before the cut-off date is entitled to excise duty exemption in respect of excisable goods (other than those appearing in the negative list) manufactured and cleared for a period of ten years from the date of commencement of commercial production. The provisions of these notifications do not place a bar or restriction on any addition/modification in the plant or machinery or on the production of new products by an eligible unit after the cut-off date and during the exemption period of ten years as per the notification. Therefore, it is clarified that in all the above situations, the benefit of the excise duty exemption under the notifications would continue to be available to eligible industrial units. However the period of exemption would remain ten years and would not get extended on account of such modifications or addition under any circumstances”.

13. It is noticed that the above Circular has clarified that Notification No. 50/2003-CE does not place a bar or restriction on any addition / modification in the plant or machinery or on the production of new products after the cut-off date. In the instant case, applicant proposes to manufacture shoes of different brand and design by installing fresh plant/machinery. Further, the contention of Revenue that the applicant proposes to take separate factory license, ESI No. and PF Codes for expanded Haridwar Plant II, therefore, it will not fall under the category of existing unit, is not correct. Relevant Notification No. 50/2003-CE, as also CBEC Circular dated 22.12.2010 and 17.02.2012, do not envisage such condition. In view of said clarifications issued by CBEC, applicant can continue to avail the benefit of excise exemption.

14. As far as second issue raised by Revenue regarding applicant starting a new unit i.e. Haridwar Plant II and not falling under the existing unit, is concerned, applicant has relied on Circular No. 960/03/2012-Cx dated 17.02.2012. Relevant extract of said Circular are reproduced, as under:-

References have been received from field formations as well as from trade and industry seeking clarification regarding admissibility of benefit under area-based exemption Notifications No. 49/2003-CE and 50/2003-CE, both dated 10.06.2003, in the following situations:

- a. When there is a change in the ownership of a Unit already availing of the benefit of an area-based exemption Notification.*
- b. When a Unit availing of the exemption physically shifts to a new location within the areas specified in the exemption Notification; and*
- c. When a Unit availing of the exemption under an area-based Notification expands by acquiring a plot of land adjacent to its existing premises and installing new plant/machinery on such land.*

In the context of expansion of a Unit by acquiring an adjacent plot of land and installing new plant and machinery on such land, attention is invited to Board's Circular No. 939/29/2010-CX dated 22.12.2010 wherein it was inter-alia, clarified that any growth in the production/output of a unit by installing fresh plant and machinery would be eligible for exemption under these area-based Notifications. The situation of expansion of an eligible unit by acquiring an adjacent plot of land and installing new plant and machinery on such land is akin to expansion by way of installing new plant and machinery inside the existing plot/premises. It is, therefore, clarified that in such cases, the exemption should continue to be available for the residual period of exemption.

15. It is observed from the above Circular dated 17.02.2012 that the situation of expansion of an eligible unit by acquiring an adjacent plot of land and installing new plant and machinery on such land, is akin to expansion by way of installing new plant and machinery inside the existing plot/premises. CBEC clarified that in such cases, the exemption should continue to be available from the residual period of exemption. In the present case, applicant proposes to effect expansion in Khasra No. 72 and 74, wherefrom the new unit had started commercial production w.e.f. 26.03.2010. Therefore, in view of Circular dated 17.02.2012, applicant is eligible for said exemption. We are particularly taking into consideration the spirit and the practical aspect enumerated in Clause (c) of paragraph 2 of said Circular

No. 960/03/2012-Cx dated 17.02.2012. Further, while examining the Notification, attention needs to be focused on the intention of the Government. It is to be noted that the Government of India, Ministry of Commerce & Industry (Department of Industrial Policy & Promotion) issued an Office Memorandum on 7th January, 2003 in lieu of New Industrial Policy aiming to provide a comprehensive framework to enable a facilitating, investor friendly environment for ensuring rapid and sustainable industrial development in Uttarakhand and, through this, to generate additional employment opportunities and to bring about a significant increase in the State Domestic Product and eventual widening of the resource base of the State. Therefore, the intention of the Government is basically, the development of States like Uttarakhand and to generate additional employment opportunities. In view of this policy decision, Notification No. 50/2003-CE has been issued by the Government inter-alia exempting goods manufactured and cleared in the specified area in Uttarakhand State from whole of the duty of excise or additional duty of excise. Therefore, it would be retrograde step and not in consonance with the policy of the Government, not to allow existing unit to grow in the existing plot of land, by installation of new plants and machineries.

16. In view of above, we rule as under;

The benefit of Notification No. 50/2003-C.E. dated 10.06.2003 will be available to goods manufactured from the unit i.e. PLANT-II HARIDWAR established from expansion of the existing unit.

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(S.S.Rana)
Member(R)

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(V.S.Sirpurkar)
Chairman

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(R.S.Shukla)
Member(L)