CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 396 of 2009

[Arising out of OIO-29/MP/VAPI/2008 passed by Commissioner of Central Excise, Customs and Service Tax-VAPI]

M/s Vijay Industries And Projects Ltd **.....Appellant**
(now Known As Kidde India Ltd.) El-205,
Ttc Industrial Area, Mahape,
NAVI MUMBAIMAHARASHTRA-400710.

VERSUS

C.C.E. & S.T.-Vapi **.....Respondent**
4th Floor...Adharsh Dham Building,
Opp. Town Police Station,
Vapi-Daman Road, Vapi,Vapi
Gujarat-396191

APPEARANCE:
Sh. Anand Nainawati, Advocate for the Appellant
Sh. T.K. Sikdar, Authorized Representative for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO.A/ 11015 /2019

DATE OF HEARING: 19.06.2019
DATE OF DECISION: 19.06.2019

PER: RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of fire fighting equipment and they have claimed the exemption notification No. 162/1986-CE and Notification No. 175/1986-CE dated 01.03.1986, they have also claimed exemption Notification No. 212/1987-CE dated 11.09.1987 in respect of supply made to ONGC. As per the impugned order the demand of Rs. 9,59,662/- is confirmed which includes the supply made to ONGC and supply of brought out items as such.

2. Sh. Anand Nainawati, Ld. Counsel appearing on behalf of the appellant submits that they do not dispute the demand of Rs. 7,50,000/- in respect of supply made to ONGC as they cannot obtain the required certificate from ONGC under Exemption Notification No. 212/1987-CE. As regard, the remaining amount 2,10,937/-, he submits that it is demand in respect of the trading of bought out items and since these are not the manufactured goods it should not be either included in the aggregate value as per notification no 175/1986-CE and being non manufactured goods no excise duty is leviable. He further submits that since they were under bonafide belief that they have entitled to Exemption Notification No. 162/86 and 212/87 there is no

malafide intention, therefore the penalty imposed under 173Q(1) may please be waved. He also submits that since the entire case is of interpretation of notification, the redemption fine of Rs. 1,00,000/- is not correct and legal. He placed reliance on the Hon'ble Supreme Court judgment in the case of Commissioner of Central Excise, Mumbai Vs. C.M.S Computers pvt. Ltd- 2005 (182) ELT 20 (S.C.).

3. Sh. T.K. Sikdar, Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have heard both the sides and perused the records. We find that the limited issue to be decided is that whether the trading of bought out item liable to duty or otherwise and whether in the facts and circumstances of the case also liable for penalty and redemption. We find that the appellant have made a specific submission before the Commissioner adjudicating authority that the demand of Rs. 2,10,937/- is only for trading i.e. sale of bought out items which has not under gone manufacturing activity. As per this fact we are of the view that there is no duty liability on the trading items value the same also not required to the added in the aggregate value for claiming Notification No.175/86. Therefore, we set aside the demand of Rs. 2,10,937/- . As regard the remaining amount of demand i.e. Rs. 7,50,000/-. The appellant have already paid the amount and could not produce the certificate form ONGC, therefore, the demand of Rs. 7,50,000/- is upheld. We find that the entire case is based on the issue of interpretation of Notification No. 162/86-CE and 212/87-CE, therefore, we do not find any malafide intention on the part of the appellant.

5. Accordingly, the penalty imposed under Rule, 173Q(1) and redemption fine are set aside. Appeal is partly allowed in the above terms.

(Dictated & pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi