Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 717 of 2012

[Arising out of Order-in-Original/Appeal No Review Order-R-10/2012 dated 16.08.2012 passed by Commissioner of Central Excise & ST, Rajkot]

Commissioner of Central Excise & ST, Rajkot .... Appellant
Central Excise Bhavan,
Race Course Ring Road, Income Tax Office,
Rajkot, Gujarat-360001

VERSUS

Joyrath Projects Pvt Limited .... Respondent
12th Cargo Berth Site, Kandla Port Trust,
Kandla, Gujarat

APPEARANCE :

Shri T.G. Rathod, Joint Commissioner (AR) for the Appellant-Revenue
None for the Respondent- Assessee

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

FINAL ORDER NO. A/12212 / 2019

DATE OF HEARING : 07.11.2019
DATE OF DECISION: 19.11.2019

RAMESH NAIR :

The appellant are engaged in the manufacture of MS Pipes falling under Chapter heading 73053190 of the First Schedule to the Central Excise Tariff Act, 1985 at 12th cargo berth site of Kandla Port Trust, Kandla. The appellant is manufacturing Pipes on behalf of M/s. ITD Cementation India Limited on job work basis but not discharging Central Excise duty thereon. After investigation, a show cause notice dated 03.06.2010 was issued demanding excise duty. The Adjudicating Authority dropped the demand on the ground that the pile liners fabricated at site of construction were used at the marine site, is exempted vide Notification No. 23/2011-CE (NT) dated 01.12.2011. The Revenue being aggrieved with the order-in-original filed the present appeal.

2. Shri T.G. Rathod, Learned Joint Commissioner (AR) appearing on behalf of the Revenue/appellant reiterates the grounds of appeal. He submits that since the MS pipes/ tubes made out of MS Plates are segments of pile liners. MS pipes/ Tubes are intermediate products which are used for fabrication of pile liners. Therefore, the MS Pipes/ Tubes and Pile Liners are distinct and separate products. MS Pipes/ Tubes manufactured and cleared by the appellant is an intermediate product for Pile Liners and therefore, is not exempted. He submits that as per amending Notification No. 41/2011-CX dated 18.11.2011, the entries of heading 7305 will be exempted only from 18.11.2011.

3. None appeared on behalf of the Respondents despite several notices on the earlier occasion. Therefore, the appeal is taken up for disposal.

4. We find that there is no dispute that even as per show cause notice that the appellant are manufacturer of MS Pipes/ Tubes exclusively at 12th 12th cargo berth site of Kandla Port Trust, Kandla. The nature of work assigned to the respondent is for "fabrication and erection of piling gantry and other associated works including installation of 100mm dia and 1200mm bored cast in situ piling and fabrication of liners for 12th cargo berth site at Kandla." As per the nature of contract, there is absolutely no doubt that MS pipes/ tubes manufactured at site for fabrication pile liners. Though the Notification No. 3/2005-CE dated 24.02.2005, under serial No. 64 of the table appended thereto, grants exemption to all goods of Chapter heading 7308. However, by issue of Notification No. 23/2011-CE (NT) dated 01.12.2011, under Section 11C of the Act with retrospective effect, the goods falling under Chapter heading 7305 are clearly exempted. Therefore, the contention of the Revenue, in the grounds of appeal that the goods become

exempted as per the amending Notification 41/2011-CE dated 18.11.2011, is not relevant in view of Notification No. 23/2011-CE (NT) dated 01.12.2011 issued under Section 11C of the Central Excise Act, 1944. Therefore, the Revenue's appeal has no substance. Accordingly, the impugned order is upheld and appeal is dismissed.

(Pronounced in the open court 19.11.2019*)*

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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