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

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11143 of 2015-DB

[Arising out of Order-in-Original/Appeal No AHM-EXCUS-001-APP-112-2014-15 dated 31.03.2015 passed by Commissioner of Central Excise-AHMEDABAD-I]

Brady And Morries Engineering Co Limited **.... Appellant**
Plot No. 505, Phase-iv, GIDC, Vatva,
AHMEDABAD, GUJARAT

VERSUS

Commissioner of Central Excise & ST, Ahmedabad **.... Respondent**
C. Ex Bhavan, Nr Panjrapole & Polytechnic, Ambavadi,
Ahmedabad, Gujarat -380015

APPEARANCE :

Shri Ankur Updadhyay, Advocate for the Appellant
Shri Anoop Kumar Mudvel, Superintendent (AR), for the Respondent

CORAM: HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 12.06.2024

FINAL ORDER NO. 11290/2024

C.L. MAHAR :

The appellant filed refund claim of Rs. 4,11,421/- with the department as they have claimed benefit of Notification No. 12/2012-CE dated 17.03.2012 amended by Notification No. 34/2012-CE dated 10.09.2012. The original adjudicating authority has rejected the claim of the appellant on two grounds, one is that the refund claim was filed delayed of one day after the prescribed period of one year and the second was that competent authority has not certified that the goods have been supplied to a Mega Power Project and therefore, the condition of Notification No. 34/2012-CE dated 10.09.2012 has not been fulfilled. The appellant approached learned Commissioner (Appeals), who vide impugned order-in-appeal dated 31.03.2015, has also rejected the refund claim of the appellant on the second point stating that – "*I find that the exemption claimed by the appellant as per the exemption Notification No. 12/2012-CE dated 17.03.2012 as amended by Notification No. 34/2012-CE dated 10.09.2012 is not available to them, as during the material time they were not holding any valid exemption certificate issued by the competent authority for claiming such exemption.*"

2. Heard both the sides. I find that the appellant has submitted a letter from the Chief Engineer, Maharashtra State Power Generation Company Limited dated 03.04.2014 which reads as follows:-

MAHAGENCO
Maharashtra State Power Generation Co. Ltd.

MAHARASHTRA STATE POWER GENERATION COMPANY LIMITED
O/o The Chief Engineer (P), Koradi Complex, Chhindwara Road, Koradi- 441 111, Dist: Nagpur
Phone: 07109- 264862 (P), 264863,264869 (O), Fax: 07109- 264866; Email: cgmkrdproj@mahagenco.in

Ref.: CE (P)/KRD/ELE-II/ No 02369 Date: 3 APR 2014

To,
The Assistant Commissioner
Office of the central excise
Range II, division-II,
2nd floor excise Bhavan bldg,
Near polytechnic Ahmbawadi,
Ahmadabad, Gujarat

Sub.: 3 x 660 MW Koradi Expn. Project, Koradi- Undertaking for dispatch of miscellaneous cranes-**Reg.**
Ref: 1)Mega power status vide letter dated 26th Oct 2010 from Ministry of power, New Delhi.
2)DG/Koradi 3x660MW BOP/PAC/A-86/No-1308 Dtd 10th Apr 2013

Dear sir,
With reference to the subject mentioned above, it is to inform that Maharashtra State Power Generation Co Ltd. Mumbai has placed EPC order on M/s Lanco infratech Ltd., for 3X660MW Thermal power project-BOP works Koradi (Maharashtra). This project has been granted Mega power status from ministry of power, New Delhi vide their letter dated 26th Oct 2010.

As a part of BOP works execution M/s Lanco infratech Ltd. has placed the order to M/s Brady & Co ltd, New Delhi & further they ordered to M/s Brady & Morris Engineering Co ltd for supply of following items.

Sr. No.	Description	Quantity
1	1Tx3.6Mtrs span US crane for Raw water pump house	01 No.
2	7.5Tx5Mtrs span US crane for Tertiary treated water pump house	01 No.
3	2Tx4.4Mtrs span US crane for Filter water pump house	01 No.
4	10Tx3.6M span US crane for Raw water pump house	01 No.

The name of the subcontractor/vendor has been incorporated vide PAC no 1308, Dtd 10th Apr 2013 issued by Chief Engineer (P&P), MSPGCL, Mumbai.

In view of above it is to state that the said Cranes will be used for Koradi project and nowhere else.

In the event of non-compliance of the above, Maharashtra State Power Generation Co Ltd. will pay the duty which would have been leviable at the time of clearance of goods.

Thanking you.

Yours faithfully,

Chief Engineer (Project),
3 x 660 MW Koradi Expansion Project,
MSPGCL, Koradi.

The above letter clearly indicates that the goods were supplied by the appellant M/s. Brady and Morries Engineering Company Limited for the Koradi Expansion Project which has been granted a Mega Power project status.

3. I find that there is no denying of the fact that goods have been supplied for the setting up of Mega Power project and they are entitled for the benefit of Notification No. 12/2012-CE dated 17.03.2012 as amended. I also take shelter of the decision of this Tribunal in the case of *Caterpiller India Pvt. Limited vs. CCE, Pondicherry – 2005 (185) ELT 430 (Tri. Del.)* which has been affirmed by the Hon'ble Madras High Court report under 2013 (297) ELT 8 (Mad.) and also affirmed by Hon'ble Supreme Court reported under 2016 (335) ELT A27 (SC) in this regard.

4. In view of the above, I find that the impugned order-in-appeal passed by learned Commissioner (Appeals) is without any merit and I set-aside the same. Appeal is allowed with consequential benefits, as per law.

(Dictated and pronounced in the open court)

(C L Mahar)
Member (Technical)

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