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

REGIONAL BENCH-COURT NO. 3

EXCISE Appeal No. 10580 of 2016 - DB

(Arising out of OIA-VAD-EXCUS-002-APP-385-2015-16 dated 22/12/2015 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

GE POWER INDIA LIMITED **........Appellant**
Erda Road, Maneja,
Vadodara, Gujarat

VERSUS

Commissioner of C.E. & S.T.-VADODARA-II **......Respondent**
1st Floor... Room No.101,
New Central Excise Building,
Vadodara, Gujarat- 390023

APPEARANCE:
Shri Ishan Bhatt, Advocate for the Appellant
Shri Satyapal Singh Vikal, Assistant Commissioner (AR) for the Respondent

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

Final Order No. 11537/2024

DATE OF HEARING: 13.03.2024
DATE OF DECISION: 11.07.2024

RAMESH NAIR

The Appellants are *inter alia* engaged in the manufacture of machinery classified under Chapter 84 & 85 of the First Schedule to the Central Excise Tariff Act, 1985 at their factory located at ERDA Road, Maneja, Vadodara – 390 013.

1.1 Against international competitive bidding, the Appellants were awarded a contract for supply of electro-mechanical and hydro-mechanical plant and machinery (onshore component) to THDC India Limited (hereinafter referred to as “THDC”) for use in Tehri PSP Hydroelectric project in the state of Uttarakhand by Contract No. THDC/RKSH/CD-262/AG/04 dated 23.07.2011.

1.2 The Tehri PSP Hydroelectric project is an inter-state Mega Hydro Power Project certified by the Joint Secretary, Ministry of Power, Govt. of India vide Letter Ref. No. 10/2/2002-II-I dated 20.04.2007.

1.3 In pursuance to the contract dated 23.07.2011, the Appellants supplied specified finished goods to THDC, a joint venture undertaking of the Government of India and Government of Uttar Pradesh, for use in the Tehri PSP Hydroelectric Power Project. During March 2015, the Appellants cleared finished goods to THDC under the cover of Central Excise Invoices No. 2001400441 dated 27.03.2015, 2001400444 dated 31.03.2015 and 2001400445 dated 31.03.2015 on payment of total duty of Rs.68,44,330/-.

1.4 At the time of clearance, as per the amended Notification No. 12/2012-CE dated 17.03.2012, the amended Condition No. 41 was applicable by amendment Notification No. 12/2015-CE dated 01.03.2015. Since, the appellant had to clear the goods in the month March-2015 itself, they could not obtain the required certificate from Chairman and Managing Director of the public sector undertaking as was required in terms of Clause (b) of Condition No. 93 of Customs Notification 17/2012-Cus dated 17.03.2012. Therefore, due to non availability of the said certificate, the appellant prefer to clear the goods on payment of duty. However, subsequently the appellant could obtain the said required certificate on 02.05.2015. The same was intimated by the appellant to the department vide their letter dated 14.05.2015. Consequent to the eligibility of the exemption notification, the appellant filed the refund claim vide their letter dated 08.06.2015 for refund claim of Central Excise duty of Rs. 68,44,330/-. They were issued a show cause notice dated 14.08.2015 proposing rejection of the refund claim and also to credit the same to the consumer welfare fund in terms of Proviso to Section 11B(2) of the Central Excise Act, 1944, if any refund of duty held liable to be sanctioned.

1.5 The Adjudicating authority i.e. Deputy Commissioner vide Order-in-original dated 02.09.2015 though observed favourability on the issue of unjust enrichment and observed that the duty burden has not been passed, thereby dropped proceeding initiated under Proviso to Section 11B(2) of the Central Excise Act, 1944 but on merit rejected the refund claim on the ground that the required certificate from the PSU was not produced at the time of clearance of the goods. Being aggrieved by the said order-in-original dated 02.09.2015, the appellant filed an appeal before the Commissioner (Appeal) which came to be rejected, therefore the present appeal filed by the appellant.

2. Shri Ishan Bhatt, Learned Counsel appearing on behalf of the appellant submits that it is not in dispute that the goods were supplied against International Competitive Bidding (ICB) as per Sl. No. 336 of Notification No.12/2012-CE dated 17.03.2012 as amended read with condition no. 41 grants exemption to goods cleared against international competitive bidding. Condition No.41 provides that the benefit of the notification is available if the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.

2.1 He further submits that the goods are eligible for exemption under Sl. No. 507 of the Customs Notification No.12/2012-Cus dated 17.03.2012. The Appellants have also fulfilled the eligibility criteria under Sl. No. 507 of the Customs Notification No.12/2012-Cus dated 17.03.2012 read with condition no. 93 to the extent that the goods are required for setting up of the Tehri PSP Hydroelectric Project which is an inter-state Mega Power Project certified by the Joint Secretary, Ministry of Power, Govt. of India.

Thus, the Appellants have satisfied condition No.41 of Notification No.12/2012-CE as amended and were thus eligible for exemption.

2.2 He submits that the Adjudicating authority has denied the exemption only on the ground that at the time of clearance of goods, the Appellants have not fulfilled the condition under clause (b) of condition No.93 of Customs Notification No.12/2012-Cus dated 17.03.2012, which provided that *in the case of imports by a Central Public Sector undertaking, the quantity, total value, description and specifications of the imported goods are certified by the Chairman and Managing Director of the said Central Public Sector Undertaking.*

2.3 He submits that since the goods were cleared in the month of March-2015, during such month only, the said condition was brought into effect vide amended Notification No. 12/2015-CE dated 01.03.2015. It was not possible for the appellant to obtain the certificate in a short time, before clearance of the goods. Therefore, the appellant have chosen to pay the duty and claim the exemption later on. Thereafter, when the such certificate was obtained, the appellant became eligible for the exemption hence, the duty so paid become refundable. Therefore, the appellant’s refund was correct and legal which could not have been rejected only on the procedural lapse. In support, he placed reliance on the following judgments:-

- Rama Spinners (P) Ltd. v. CCE – 2007 (220) ELT 330 (Tri.)
- CC (Airport) v. Regional Executive Dir. Airport Authority of India – 2007 (217) ELT 298 (T)
- Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner - 1991 (55) ELT 437 (S.C.)
- BASF India Ltd. v. Commissioner of Customs, Cochin- 2014 (301) ELT 343 (Tri.)
- Enar Chemic Pvt. Ltd. v. CCE, Vadodara- 2011 (274) ELT 221 (Tri.)

- CCE, Haldia v. Exide Industries Limited- 2009 (247) ELT 87 (Cal.)
- Kamakhya Steel Ltd. v. CCE- 2000 (121) ELT 247 (Tri.-LB)
- Archana Syntex Ltd. v. CCE- 2005 (191) ELT 545 (Tri.)
- Aadithya Chemicals v. CCE- 2005 (191) ELT 530 (Tri.)
- CCE v. Unimark Remedies Ltd.- 2009-TIOL-357 (Tri.)
- CCE, Chennai v. Dynaspede Integrated Sytems Pvt. Ltd.- 2002 (147) ELT 541 (Tri.)
- CCE, Vadodara-II v. Ircon International Ltd.- 2008 (228) ELT 587 (Tri.)
- Gujarat Ambuja Cement v. CCE, Bhavnagar- 2007 (216) ELT 460 (Tri.)

3. Shri Satyapal Singh Vikal, Learned Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that the appellant have cleared the goods in the month of March-2015 and only in that month vide amended Notification No. 12/2015-CE dated 01.03.2015, the Condition No. 41 was amended which is reproduced below:-

> *"If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India.*
>
> *Provided that if the goods when imported into India are so exempt from the said duties of customs subject to certain conditions prescribed under a notification issued under the Customs Act, 1962, then such conditions shall, mutatis mutandis, apply for the purposes of this exemption."*

Prior to the above amendment the Condition No. 41 reads as under:-

> *"If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and*

> *the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India."*

From the above changes, it is clear that when the condition was amended on 01.03.2015, it was not practically possible for the appellant to obtain a required certificate within the same month. Therefore, the appellant has chosen to clear the goods on payment of duty, subsequently, admittedly the appellant have obtained certificate. Thereafter all the conditions of Notification No. 12/12-CE dated 17.03.2012 and Notification No. 12/2012-Cus dated 17.03.2012 and conditions thereof stands complied with. In this position, merely because the certificate required for availing the exemption notification was not available at the time of clearance of the goods, the exemption could not have been denied.

4.1 We are of the view that a piece of paper i.e. certificate is only a procedural requirement but the nature of supply is predominant for granting the exemption which was never been in dispute, after obtaining certificate the procedural requirement also stands fulfilled. It is a settled law by the Hon'ble Apex Court in the various judgments that benefit of Notification can be claimed at any stage if otherwise the same is eligible to the assessee. Therefore even though at the time of clearance of the goods the appellant have paid the duty but after obtaining the certificate, all the conditions prescribed under notification stand complied with. Therefore, at a later stage also claiming the exemption by the appellant, by way of filing the refund claim is absolutely in order and correct. The judgments relied by the appellant directly support their case. In some of the judgments, it is categorically held that merely because at the time of clearance of goods certificate was not available, however the same was submitted later on the substantial benefit of exemption cannot be denied. Therefore, the issue is no longer res-integra.

4.2 As regard the unjust enrichment, the adjudicating authority has categorically dropped the proceeding under Section 11B(2) holding that there is no unjust enrichment in this case. This observation was also endorsed by the Learned Commissioner (Appeals) in the impugned order.

5. As per our above discussion and findings, we are of the clear view that the appellant is eligible for exemption notification and consequential refund of the duty paid at the time of clearance of goods. Therefore, the impugned order is set aside. Appeal is allowed, with consequential relief.

(Pronounced in the open court on 11.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha