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

REGIONAL BENCH- COURT NO.3
Excise Appeal No.10407 of 2017

(Arising out of OIO-VAD-EXCUS-002-COM-038-16-17 dated 23/11/2016 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II)

Bombardier Transportation India Ltd ....**Appellant**
Erda Road, Maneja,Vadodara
Gujarat

VERSUS

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

APPEARANCE:
Shri. Saurabh Dixit, Advocate for the Appellant
Shri Tara Prakash, Deputy Commissioner (AR) for the Respondent

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

Final Order No. 11585 /2024

DATE OF HEARING: 26.04.2024
DATE OF DECISION:16.07.2024

RAJU

This appeal has been field by Bombardier Transportation India Ltd. against denial of Cenvat Credit availed by them.

2. The appellants are sub-contractors manufacturing electric locomotives parts and Metro Railway coaches in their units located at Maneja at Savli Dist. Vadodara. That M/s. Delhi Metro Rail Corporation Ltd. (DMRC) had awarded a contract to the appellant for supply of Metro Railway coaches and parts thereof. These imports of DMRC have been exempted by the Ministry of finance, Government vide Notification No.21/2002-Cus. read with

119/2006-Cus of India for exemptions for the purpose of the Central Excise Duty. The contract has been awarded to the appellant after following the process of International Competitive Bidding (ICB). The appellants are eligible to claim exemption from payment of whole of duty of Central Excise in respect of all items of equipment, including machinery, and rolling stock for use in the specified DMRC projects. The exemption has been notified at Sr. No. 90 to Notification No. 06/2006-CE dated 01.03.2006. The exemption is applicable to all supplies made by the appellant to M/s. DMRC for the specified projects. Learned Counsel further pointed out that the appellant was also eligible to claim exemption in respect of the goods manufactured by it in its factory and supplied against ICB. These exemptions have been granted at Sr. No 91 of Notification No. 6/2006-CE. He argued that both exemption i.e. at Sr. No. 90 as well as 91 of the said notifications are available independently to the appellant. He argued that the supplies to DMRC were covered under ICB procedure and therefore the benefit of Rule 6(6) of CCR, 2004 is applicable to them. He further argued that the issue has been decided in numerous other decisions including the following:-

a. CST Ltd. 2008 (230) E.L.T. 85 (Tri. - Bang.)

b. Kent Introl P. Ltd. 2014 (301) E.L.T. 84 (Tri. - Mumbai)

c. Kent Introl P. Ltd. 2016 (331) E.L.T. 77 (Bom.)

d. Unique Industrial Handlers P. Ltd. 2016 (333) E.L.T. 311 (Tri. - Mumbai)

e. H.D. Fire Protect India P. Ltd. 2014 (307) E.L.T. 881 (Tri. - Mumbai)

f. Toshniwal Indus. P. Ltd. 2017 (5) G.S.T.L. 179 (Tri. - Del.)

2.1. He further argued that there are numerous decisions where benefit of Sr. No. 90 and 91 of Notification No. 6/2006-CE has been allowed and therefore the appellant had a bonafied view that they are entitled to the benefit of the said notification. In these circumstances, extended period of limitation cannot be invoked.

2.2. He further argued that when the appellant have cleared goods to DMRC under Duty Exemption Certificate issued by DMRC under Sr. No. 90 of Notification no. 6/2006-CE, the benefit of Sub-Rule (6) of Rule 6 of CCR, 2004 read with Sr. No 91 of Notification 6/2006-CE cannot be denied to the appellant. He argued that if benefit is available under two different categories of the Notification, failure in one category cannot result ineligibility in the other category. He relied on the decision of Hon'ble Apex Court in the Share Medical Care V/s. UOI-2007 (209) ELT 321 (SC.) and in case of HCL Ltd. V/s. CCE-2001 (130) ELT 405 (SC). He further pointed out that under the similar circumstances, where supplies have been made by a sub-contractor through the main contractor in respect of contracts obtained through ICB, it has been held that embargo under Rule 6 of CCR, 2004 is not applicable. He relied on the following decisions:-

a. Sangam Structurals Ltd. 2018(9) TMI 1425- CESTAT ALLAHABAD
b. BHEL 2015(7) TMI 225- CESTAT NEW DELHI
c. Alstom T&D (India) Ltd. 2016(6) TMI 663-CESTAT CHENNAI
d. SCHWING STETTER (1) PVT. LTD. 2018 (364) E.L.T. 653 (Tri. - Chennai)
e. K.E.I. INDUSTRIES LTD2016 (338) E.L.T. 618 (Tri. - Del.)

2.3. He further argued that the issue is of interpretation of law and therefore invocation of extended period of limitation cannot be sustained as appellant held a bonafide view that they are entitled to credit.

3. Learned AR relies on the impugned order.

4. We have considered the rival submission. We find that the issue relates to supplies made against International Competitive Bidding. The facts of the case are that the appellant had obtained the contract under International Competitive Bidding from DMRC. The appellant had two units one located at Maneja and other at Savli. This demand of Cenvat Credit pertains to the goods manufactured in Maneja. It is not disputed in the instant case that the dispute relates to the goods supplied by the appellant from its plant in Maneja to other plant located at Savli. It is also fact that the appellant has obtained the contract for manufacture of equipment for DMRC under International Competitive Bidding Sub-Rule (6) of the Rule 6 of CCR, 2004. Provides an exception from Rule 6 of CCR, 2004 for such supplies.

> *"(6) The provisions of Sub-Rules (1), (2) (3) & (4) shall not be applicable in case the excisable goods removed without payment of duty are either*
>
> *(i)...*
>
> *(ii).*
>
> *(vi) all goods which are exempt from duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the Additional Duty leviable under Sub-Section (1) of Section 3 of the Customs Tariff Act, when imported into India and are supplied (a) against International Competitive Bidding in terms of Notification No.6/2006-CE dated the 1" March 2003."*

From the above scheme, it is amply clear that where the goods are obtained for a contract which is obtained under International Competitive Bidding, and where the imports of such goods are totally exempted from basic and Additional Customs Duty, the Cenvat Credit availed also need not be reversed in terms of Rule 6(6) of the Cenvat Credit Rules, 2004.

5. In the instant case, it is seen from the impugned order that this principle has been accepted by the adjudicating authority. The objection of adjudicating authority is recorded in para 11.6 of the impugned order in the following terms:-

> *"11.6 in view of the above, it can be observed that intention of the notification is very clear that it is available only in the case when the goods are procured by or on behalf of Delhi Metro Rail Corporation Ltd. When locked into the facts of the present case, it is noticed from the documents as well statement dated 05.02.2010 of Shri H.C. shah (sr. no. viii), wherein he inter alia admitted that "they had also procured some of the inputs on their own on payment of duty but they had not declared such procurement to the Mis. DMRC regarding these inputs which had been used in the manufacture of trains under Contract "RS2"; that at the time of procuring such duty paid inputs, such inputs were originally intended to be used in the manufacture of their own final Products and hence they had neither informed M/s. DMRC about such purchases nor obtained the exemption certificate from M/s. DMRC for such purchase; they had taken the Cenvut credit on the same, but thereafter, without informing M/s. DMRC they had used the same i.e., cenvated inputs, in the manufacture of excisable goods intended for DMRC Project Also, <u>Shri H.C. Shah in his statement dated 13.10.2009 has inter alia admitted "that since they were also manufacturing similar excisable goods on their own account after availing the Cenvat Credit on the inputs and the finished excisable goods manufactured there-from were exported to Germany for being used in manufacture Metro Rail coaches, the duty-paid inputs procured for such purposes have been utilized in the manufacture of goods supplied on behalf of M/s. DMRC without reversing applicable Cenvat Credit.</u> These all facts lead to the conclusion that they had not procured the goods by or on behalf of Delhi Metro Rail Corporation Ltd. As such, it is clear that in case of procurement of inputs in question the condition as laid down under notification has not been complied therefore, the benefit of the Notification ibid as claimed by them cannot be extended to them. Just because of mentioning on the body of contract that goods supplied under international competitive bedding, the benefit of Notification ibid cannot be extended to them until and unless the intention inherited in it complied by them. Once the assessee has failed to procure the goods on behalf of DMRC, then under such facts and circumstances, the goods cleared by them cannot be considered the clearance of goods under international competitive bidding. This view is supported by the ratio of judgments in the case of CCE, New Delhi Vs Harichand Sri Gopal [(2010)(260) ELT 3(SC). The relevant text of the judgment is reproduced below.*
>
> > *(xv). "22. The law is well settled that a person who claims exemption or concession has to establish that he is entitled*

to that exemption or concession. A provision providing for an exemption, concession or exception, as the cast may be, has to be construed strictly with certain exceptions depending upon the settings on which the provision has been placed in the Statute and the object and purpose to be achieved. If exemption is available on complying with certain conditions, the conditions have to be complied with. The mandatory requirement of those conditions must be obeyed or fulfilled exactly, though at times, some lat rude can be shown, if there is a failure to comply with some requirements which ire directory in nature, the non- compliance of which would not affect the essence or substance of the notification granting exemption. In Novopan Indian Ltd. (supra), this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the state.

(xvi). A Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave (1996) 2 SCR 253, held that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter of the should be governed wholly by the language of the notification, le., by the plain terms

(xvii). exemption.

(xviii). 23. Of course, some of the provisions of an exemption notification may be directory in nature and some are of mandatory in nature. A distinction between provisions of statute which are of substantive character and were built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. In Tata Iron and Steel Co. Ltd. (supra), this Court held that the principles as regard construction of an exemption notification are no longer res Integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed literally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature."

(xix). B. M/s Indian OIL corporation Ltd. Vs CCE Vadodara 2012(276) ELT 145 (SC)

(xx). In the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal [2010 (260) ELT 0003 (S.C.)= (2011) 1 SCC 236] a Constitution Bench of this Court considered the decisions of this Court in Thermax Private Limited v. The Collector of Customs (Bombay), New Customs House (supra) and Collector of Central Excise, Jaipur v. J.K. Synthetics (supra) and held that a provision for exemption, concession or exception, as the case may be, has to be construed strictly and if the exemption is available only on complying certain conditions, the conditions have to be complied with. In the aforesaid decision, the Constitution Bench further held that detailed procedures have been laid down in Chapter X of the Rules so as to curb the diversion and utilization of goods which are otherwise excisable and the plea of substantial compliance or intended use therefore has to be rejected."

6. The adjudicating authority has raised doubts about the use of all the goods supplied by the Maneja plant to the Savli plant being in the nature of the goods supplied in connection with the contract with DMRC. From the perusal of the appeal memorandum and synopsis submitted by the appellant, it is seen that this ground has not been contested. No specific evidence has been produced to establish that all the goods supplied by the appellant to their plant at Savli related solely to supplies with respect to DMRC contract. In principle the impugned order accepts the argument of the appellant that when the goods are supplied by a contractor to DMRC including those supplied by sub contract to the main contractor, in respect of the contracts obtained through the process of International Competitive Bidding and where the imports of such goods are also exempted from Basic and Additional Customs Duty, full exemption can be availed and no CENVAT Credit on inputs needs to be reversed. This principle has been accepted by the Commissioner. His objection appears to be only in the nature of the evidence that all the goods supplied were exclusively in the nature of supplies made against the DMRC contracts obtained under International Competitive Bidding or otherwise. Since, these questions have not been answered in the appeal memorandum or in the synopsis, we are constrained to remand the matter back to the original adjudicating authority to give an opportunity to appellant to clarify this aspect. The appellant are liberty to submit all the evidences in support of the claim that the all goods supplied by them were indeed in the nature of supplies made for the fulfilment of the contract obtained from DMRC under International Competitive Bidding from

their other factory. If such evidence is produced, the benefit of Rule 6 (6) of the CCR will be extended to the appellant.

7. Appeal allowed by way of remand for fresh adjudication.

(Pronounced in the open Court on 16.07.2024)

RAMESH NAIR
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi