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

REGIONAL BENCH- COURT NO. 3

Excise Appeal No. 10591 of 2018-DB
(Arising Out of Order No. OIA-CCESA-SRT-APPEALS-PS-143-144-2017-18 Dated 30.10.2017 Passed By Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

KEC International Ltd. **........Appellant**
Rpg Centre 30, Forjett Street, Near Bhatia Hospital, Tardeo
Mumbai-Maharashtra

VERSUS

C.C.E. & S.T. - Daman **........Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi-Gujarat-396191

WITH
Excise Appeal No. 10592 of 2018-DB
(Arising Out of Order No. OIA-CCESA-SRT-APPEALS-PS-143-144-2017-18 Dated 30.10.2017 Passed By Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I)

Tarun Santra **........Appellant**
Authorized Signatory M/S. Kec International Limited
Samlaya - Savli Road, Village, Godampura, Taluka - Savli,
Vadodara-Gujarat

VERSUS

C.C.E. & S.T. Daman **........Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi-Gujarat-396191

APPEARANCE:
Shri Sanjay Desai, General Manager of Company appeared for the Appellant
Shri P. Ganesan, Superintendent (Authorised Representative) appeared for the Respondent

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

FINAL ORDER NO. 12479-12480 /2024

DATE OF HEARING:28.06.2024
DATE OF DECISION:23.10.2024

RAMESH NAIR

The brief facts of the case are that M/s KEC International Ltd., Plot No. 273/4, Demni Road, Dadra, Silvassa, (hereinafter referred to as 'appellant' for the sake of brevity), are engaged in the manufacture of electric wire and cable XLPE falling under Chapter Sub-heading No. 85446090 of Central Excise Tariff Act, 1985 for which they are holding Central Excise Registration no. ASACL5599HEM004.

1.1 The Appellant received Project Authority Certificate (PAC) bearing No. PAC (Amendment No. 3) vide Contract No. MR/MH/MM/LSTK/JRB/

Revamp-Glycol-Ho-CW/56/09/Y 15RC09010/ PC-7024 DT. 14.09.2010. issued by M/s. Oil and Natural Gas Corporation for contract awarded against International Competitive Bidding to M/s. HAL offshore Limited as Main Contractor and the Appellant has been mentioned as Sub-Contractor.

1.2 Based on aforesaid PAC, the Appellant cleared manufactured goods vide Central Excise Invoice No.907 dt. 15-10-2012 & 921 dt. 23-10-2012 without payment of duty under Notification No.12/2012-CE dt.17-03-2012.

1.3 Thereafter, the Assistant Commissioner of Central Excise issued Show Cause Notice bearing No. F. No. V(Ch.85)03-29/Dem/13-14 dt. 28-03-2014 alleging that the Appellant has cleared the manufactured goods vide Central Excise Invoice No.907 dt. 15-10-2012 & 921 dt. 23-10-2012without payment of duty under Notification No.34/2006-CE dt. 14-06-2012. This Notification provides exemption from duty subject to fulfilment of conditions laid down in the said Notification and the Appellant failed to fulfil the said conditions. Further the Board Circular No.837/14/2006-CX dt. 03-11-2006 has set up the procedure for goods cleared under Served from India Scheme and Appellant failed to follow the said procedure. Therefore, the Appellant has wrongly availed the exemption of duty for goods cleared as referred above. The show cause notice was issued by invoking extended period and also proposed to impose penalty under Section 11AC of the Central Excise Act, 1944. Further he has imposed personal penalty of Rs.5,000/- on Shri Tarun Santra (Employees) under Rule 26 of the Central Excise rules.

1.4 The Appellant has made specific submission before the Commissioner (Appeals) that the Appellant has not availed the benefit of Notification No.34/2006-CE for clearance of goods without payment of duty. Therefore, the Appellant is not requiring fulfilling the conditions given in Notification No.34/2006-CE dt. 14-06-2006 and not require following the procedure prescribed vide Board Circular. The Appellant submitted before Commissioner (Appeals) that the goods were cleared without payment of duty by availing the benefit of Sr.No.336 of Notification No.12/2012-CE dt.17-03-2012 as the goods are cleared against International Competitive Bidding. The clearance of goods under International Competitive Bidding is exempt from duty vide Sr.No.336 of Notification No.12/2012-CE The Appellant has submitted the copies of the PAC as well as copies of the Central Excise invoices before the Commissioner (Appeals) to substantiate that the goods were cleared by availing the benefit of Notification No.12/2012-CE. This fact has also been explained during the personal hearing held on 09-10.2017 by the Authorised signatory of the Appellant. The Commissioner (Appeals) has not provided any finding or comment on the submissions made by the Appellant and confirmed the demand.

1.5 The commissioner (Appeals) confirmed the demand on the ground that the Appellant has not followed the conditions provided in the Notification No.34/2006-CE dt. 14-06-2006 for goods cleared without payment of duty and also failed to follow the procedure set up in Board Circular No. 837/14/2006-CE dt.03-11-2006 Further, he also confirmed personal penalty of Rs.5,000/- on Shri TarunSantra (Employees) under Rule 26 of the Central Excise rules.

2. Shri Sanjay Desai, General Manager (Finance) appearing on behalf of the appellant submits that the appellant has claimed the benefit of Notification No. 12/2012 -CE dated 17.03.2012 (Sr no. 336) and not by availing the exemption notification no. 34/2006. He submits that the benefit of notification was denied only on the ground that the appellant has not followed the procedure as prescribed under the board circular dated 03.11.2006. He submitted that firstly the board circular is in the respect of notification no. 34/2006-CE dated 14.06.2012 which was not claimed by the appellant and the same is not applicable. In case of Notification No. 12/2012-CE , he submits that the appellant has supplied the goods to ONGC for the project of Hindustan Aeronautics Ltd and a necessary project authority was submitted that is the only requirement for availing the exemption Notification No. 12/2012-CE, therefore, there is no reason to deny the exemption notification.

2.1 He further submits that the demand was raised by invoking the extended period, however, there was no suppression of fact on the part of the appellant with intention to evade the payment of duty. Therefore, the demand is hit by time bar. He further submits that the identical issue has been decided in the appellant own case . He placed reliance on the following judgments:-

- KEC International Ltd – Final Order No. 11181-11183/2024 dated 07.06.2024 (Tri. Ahmd)
- Cosmic Dye Chemical vs. Collector of Bombay
- Pushpam Pharmaceutical Co. vs. CC, Bombay– 1995 (78) ELT 401 (SC)
- Tamil Nadu Housing Board – 2004 (74) ELT 09 (SC)

3. Shri P. Ganesan, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have carefully considered the submission made by both sides and perused the records. We find that the appellant has claimed the exemption notification no. 12/2012-CE dated 17.03.2012 which does not contain any condition except the submission of PAC which is not in dispute, therefore, the appellant is clearly entitled for the Notification No.12/2012-CE dated 17.03.2012 (Sr. no. 336). This was clearly presented before the learned Commissioner (Appeals) also but the Learned Commissioner (Appeals) has not given any finding or comment on the submission made by the appellant in this regard. This issue has been considered by this Tribunal in the appellant's own case vide Final Order No. 11181-11183/2024 dated 07.06.2024 which is reproduced below:- para 4 onwards

> *"4. We have carefully gone through the rival submissions of the Counsel of the appellant and the AR of the revenue. We are of the considered opinion that invoking of the provisions of the Customs notification No. 21/2002 at the adjudication stage which were not cited in the show cause notice was clearly beyond the scope of SCN as rightly contended by the Ld. Counsel of the appellant and further we agree with the argument of the Ld. Counsel that the provisions of the Custom notification no. 21/2002 cannot be applied to the appellant who is not the importer of the goods. Therefore, the benefit of Sr. No. 91 of Notification No. 6/2006-CE and Sr. No. 336 of notification no. 12/2012-CE could not be denied to them as the goods were duly Certified by the jurisdictional Assistant Commissioner to the effect that all the invoices were for the goods supplied against International Competitive Bidding.*
>
> *5. As regards non-observance of the condition with respect to furnishing of undertaking by the Chief Executive Officer, in view of the categorical findings of the Jurisdictional Assistant Commissioner that the genuineness of the quantum of the claim of the appellant on the verification of the invoices is not disputed and the appellant was duly in possession of the requisite certificate from the Chief Engineer in the Central Electricity Authority, copy of which was also marked to the department, we find that the appellant had substantially complied with the provisions of the relevant notification and mere non-submission of undertaking was only a procedural infringement and substantial benefit cannot be decided merely for a bonafide procedural lapse whereas the provisions of the notification were otherwise fully complied substantially by the appellant.*
>
> *6. In view of above findings we hold that no demand is sustainable against the appellant under Sr. No. 91 of Notification 6/2006-CE and Sr. No. 91A of Notf. 6/2006-CE as amended by Notf. 46/2008 as well as notification 12/2012-CE. Accordingly, we drop the demand on this issue.*
>
> ***Notification 33/2005-CE as amended vide Notf. 38/2005 and Notification No. 15/2010-CE as amended vide Notification No. 26/2012-CE***
>
> *7. In this case the demanded has been confirmed by the Ld. Pr. Commissioner on the ground that the appellant has failed to produce the requisite certificate to the Deputy Commissioner of Central Excise issued by the Deputy Secretary to the Government of India in the Ministry of Non- Conventional Energy Sources/ Ministry of New and Renewable Energy as well as an undertaking that the goods will be used only in the said project and not for any other use. Ld. Counsel for the Appellant has argued that the requisite Certificate from the Ministry was endorsed directly to the Deputy Commissioner, therefore the necessary condition in this respect is satisfied. He further argued that the Jurisdictional Assistant Commissioner in his report dated 26.02.2016 has stated that all the invoices as per Annexure has been verified and found as per the goods supplied for the project. Therefore, the requisite condition has been substantially satisfied. As the appellant has fulfilled the substantive condition of the notification, benefit of exemption Notification should not be denied by applying the ratio of the Supreme Court judgment in the case of*

Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner reported in 1991 (55) E.L.T. 437 (S.C.). Per Contra the Ld. AR has argued that Hon'ble Apex Court in the case of Commissioner of Central Excise, New Delhi vs. Hari Chand Shri Gopal and Ors.-2010 (260) ELT 0003 (S.C.) has held that 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 case 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 requirements of those conditions must be obeyed or fulfilled exactly, though at times, some latitude can be shown, if there is a failure to comply with some requirements which are 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.

8. We find that the copy of the requisite certificate has been supplied by the Ministry directly to the department this fact has not been disputed by the department. Further, it is also not disputed that the invoices were issued according to the project Certificate. Once these conditions are satisfied, merely that the requisite certificate was not furnished by the appellant is merely procedural. Further, the purpose of required undertaking was merely to ensure that the exemption is not being misused. Once the genuineness of the invoices has been verified and found to be justify the quantum of claim of the appellant as verified by the Jurisdictional assistant Commissioner, the non-submission of undertaking by the appellant is merely procedural and the appellant should not be denied the substantial benefit merely for procedural lapse. Even the Hon'ble Supreme Court in the judgement in the case of Hari Chand Shri Gopa cited by the AR has made an exception to such procedural lapse where it is ascertained that the manufacturer was eligible to avail the exemption. The Hon'ble Apex Court in para 29 of the judgement has cited with approval that -

> *"In J.K. Synthetics (supra), the assessee was the manufacturer of polyster chips, staple fibre and tow from Mono-Ethylene Glycol (MEG). On Importing those goods, they claimed exemption from payment of additional duty of customs thereon because MEG was exempted from the payment of excise duty by virtue of notification dated 4-5-1987 Issued under Section 8 of the Tariff Act. In that case, the contention was raised by the Revenue that the assessee had not followed the conditions laid down in Chapter X of the Excise Rules. But the Tribunal, on facts, found that there had been substantial compliance of the procedure by the assessee, which was approved by this Court without laying down any principle as such which cannot be applied to the facts of the present case."*

9. In view of the above discussion, we are of the considered view that there was a substantial compliance of the provisions of the exemption notifications under reference and the substantial benefit could not be denied merely for procedural lapse.

10. In view of the above findings, impugned order is set-aside and the appeals are allowed."

4.1 In view of the above decision in the appellant's own case, the learned Commissioner (Appeals) order without considering the entitlement of exemption notification no 12/2012-CE is not legal and proper. Hence, we set aside the impugned order and allow the appeals. Other appeal for personal penalty on Shri Tarun Santra which is consequential to the demand of duty on the company. Since the duty demand against company is not sustainable, consequential penalty will also not sustain.

5. Accordingly, both the appeals are allowed.

(Order pronounced in the open court on 23.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha