CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70620 of 2018-[DB]

(Arising out of Order-in-Appeal No.188/Comm.(Audit)/CE/Appl./KNP/2018 dated 22/03/2018 passed by Commissioner of Central Tax & Central Excise (Audit), Kanpur)

M/s Trident Auto Components Pvt. Ltd., ...Appellant

(B-16 & B-17, Udyog Kunj, Panki Industrial Area, Kanpur)

VERSUS

Commissioner of Central Excise, ...Respondent

(Kanpur)

APPEARANCE:

Absent on call, for the Appellant
Shri Pawan Kumar Singh, Supdt Authorised Representative for the Respondent

CORAM: HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-71646 / 2019

DATE OF HEARING : 21 August, 2019
DATE OF DECISION : 21 August, 2019

PER: ARCHANA WADHWA

Nobody appeared on behalf of the appellant. Accordingly, we have gone through the impugned order and have heard the learned Authorised Representative.

2. As per facts on record, appellant is engaged in the manufacture of excisable goods, which were being supplied by him to M/s Hinduja Power Project, Vishakhapatnam under the

claim of exemption in terms of Sl. No.91 B of Notification No.06/2006-CE dated 01.03.2006, as amended, vide Notification No.06/2011-CE dated 01.03.2011. The said notification provides exemption to the goods when supplied to Mega Power Project subject to fulfillment of condition annexed thereto. As per condition No.28- "if the certificate issued by the Joint Secretary of Ministry of Power regarding the project status of recipient of the goods is provisional, the Chief Executive Officer of the project has to furnish a Fix Deposit Receipt (FDR) for an amount equal to Central Excise duty payable for a term of 36 months or more to the Deputy Commissioner or the Assistant Commissioner of Central Excise".

3. As the certificate issued by the Ministry of Power to M/s Hinduja Power Project was provisional, they were required to give FDR covering the duty of excise payable for a term of 36 months. The said certificate was given by the power project but the amount was for Rs.8,50,873/- whereas the Central Excise duty leviable on the goods for the period of 36 months was Rs.11,75,814/-. Accordingly, revenue entertained a view that inasmuch as, no FDR was given for the differential amount of around Rs. 3 lakhs, the appellant was required to pay the duty. Accordingly, proceedings were initiated against them by way of issuance of a show cause notice dated 10.10.2013 raising the demand of duty of Rs.3,64,941/- against the appellant, by invoking the longer period of limitation. The said show cause notice culminated into an order passed by the Original Adjudicating Authority, confirming the demand along with

interest and imposing penalties. On appeal, Commissioner (Appeals) accepted the assessee's plea that the longer period of limitation was not available to the revenue and held that the demand covering the normal period would only survive. As regards merits, he observed that inasmuch as the condition no.28 of the notification was not fulfilled by the assessee, the demand has to survive. However, he set aside the penalty imposed upon the appellant as there was no malafide or suppression on their part. The said order of Commissioner (Appeals) is impugned before us.

4. After carefully considering the contentions of the assessee as advanced by him in their appeal memo and before the authorities below and as also the reasoning of the lower authorities, we find that admittedly in terms of condition no.28 of notification in question, Chief Executive Officer of the project has to furnish the FDRs covering the duty element of 36 months, inasmuch as the said project was provisional. Admittedly, the said condition is meant to secure the revenue in case of none admissibility of the notification. Revenue in their proceedings below have nowhere alleged or held that the benefit of notification was otherwise not available to the assessee. It stands accepted that the goods were supplied to the M/s Mega Power Plant and it the Power Project would have given the FDR for the balance amount also, the benefit of the notification would have been available to them. Filling of FDR is only a procedural requirement of the notification to ensure that the goods cleared in the name of M/s Mega Power Project actually reached in the

project and does not get diverted. In the absence of any allegation to that effect, we are of the view that the none fulfillment of the said condition which in any case was to be fulfilled by the power project, cannot lead to the denial of substantive exemption otherwise available to the assessee. Reliance for the above proposition can be made to the Hon'ble Supreme Court decision in the case of Mangalore Chemicals and Fertilizers Ltd. Vs Deputy Commissioner reported as 1991 (55) ELT 437 (SC) wherein it was observed that while interpreting an exemption notification, distinction has to be made between procedural condition of a technical error and substantive conditions. Non-observance of the procedural condition which is condonable was held as not leading to the denial of the benefit which was otherwise available.

5. In view of the above, we find no merits in the revenue's stand. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

akp