CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 1615 of 2010

[Arising out of Orders-in-Original No. 23 & 24/2010 dated 26.04.2010 passed by the Commissioner of Central Excise, Bangalore-III Commissionerate]

Rolastar Private Limited
No. 64, HD Pura,
Dasanapura Hobli,
Golden Palms and Spa Road,
Alur Post,
Bangalore–562123 **......Appellant**

VERSUS

Commissioner of Central Tax
TTMC/BMTC Building, 4th Floor
Domlur, Bangalore – 560 071 **......Respondent**

WITH

Excise Appeal No. 1616 of 2010

[Arising out of Orders-in-Original No. 23 & 24/2010 dated 26.04.2010 passed by the Commissioner of Central Excise, Bangalore-III Commissionerate]

Rolastar Private Limited
No. 64, HD Pura,
Dasanapura Hobli,
Golden Palms and Spa Road,
Alur Post,
Bangalore–562123 **......Appellant**

Commissioner of Central Tax
TTMC/BMTC Building, 4th Floor
Domlur, Bangalore – 560 071 **......Respondent**

Appearance:

Ms. Disha Gursahaney, Advocate for the Appellant

Mr. Dyamappa Airani (AR) for the Respondent

Coram:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 21454 - 21455 / 2023

Date of Hearing: 01.08.2023
Date of Decision: 22.12.2023

Per: Pullela Nageswara Rao

M/s. Rolastar Pvt. Ltd., the appellant is engaged in the manufacture of Galvanized Iron (G.I) hollow profiles classifiable under Chapter Sub Heading 7304 and Aluminum Hollow Profiles classifiable under Chapter Sub Heading 7604 of the schedule to CETA, 1985. The brief facts are the appellant is supplying goods to 100% EOU based on CT-3 certificate received by them from the jurisdictional Central Excise officer of 100% Export Oriented Unit and they are clearing the goods by following the prescribed procedure. On receipt of the goods by the 100% EOU, the appellant receives back the Application for Removal of Excisable Goods (ARE) form certifying the re-warehousing of the goods by the 100% EOUs. The copies of the ARE forms are filed with the jurisdictional Central Excise Office of the appellant. This activity, which was being carried out by the appellant for a long time and at no point, the jurisdictional Central Excise officer has pointed out any discrepancy in the procedure followed by the appellant.

2. The appellant was subjected to the audit by the Department and it was pointed out that the goods cleared by the appellant under CT-3 certificates are not eligible for the benefit of the Notification No. 22/2003-CE dated 31.03.2003. Consequently, the appellant was issued with two show-cause notices both dated 10.09.2009. The learned Commissioner confirmed the demand with interest and imposed penalty

through a common order. Aggrieved, with the impugned order this appeal is filed before the Tribunal.

3. In reply to the show-cause notice the appellant has submitted that the contention of the Department that they are not eligible for benefit of Notification No. 22/2003-CE dated 31.03.2003 cannot be sustained in law and on merits and also barred by limitation for the period 2005-06 to 2008-09; there is no allegation of suppression, misstatement or willful intention to evade duty in the show-cause notice; and in the entire show-cause notice there is no allegation of suppression as the entire transactions are duly reflected in their records and the whole case has been made out based on the records maintained by them; the demand is solely based on audit observation and it is settled law that in such cases extended period cannot be invoked; since the Department has come to the conclusion that the goods supplied against the CT-3 certificates cannot be considered as air-conditioning equipment or spares, parts of air-conditioning system is no ground to demand duty particularly, when the CT-3 certificate was issued by jurisdictional Central Excise officer of the user industry and in those CT-3 certificates all the details have been furnished and there is no suppression even from the user industry; they are expected to look into the fact as to whether there is a proper certificate for the goods to be dispatched by them and they have to ensure that the goods are to be sent under the cover of ARE-3 and follow up to get the re-warehousing certificate, which they have done in the instant case; they are not required to look into the enduse of the product supplied by them and there is no such requirement in law; the Department based on erroneous study of the notification denied the benefit particularly,

when the clearances were made against CT-3 certificates issued by the Department. Further in such a situation the liability of duty is on the user industry and not on the appellant. Since for the violation of any conditions of Notification No. 22/2003 dated 31.03.2003 the user industry is liable for payment of duty; when the duty itself cannot be sustained in law the proposal to demand interest and to impose penalty under Section 11AC of the Act, ibid and Rule 25 of the Central Excise Rules is illegal and unjust; in the show-cause notice C.No. V/73/15/61/2008 Adj B.III dated 10.09.2009, the demand is raised under Section 11A, hence the provisions of Section 11AC cannot be made applicable as the demand is clearly barred by limitation.

4. As regards the larger time limit invoked in this case based on audit, the appellant has contended that the larger time limit cannot be invoked based on the audit observation. In support they have cited the following case-laws:

a. **Ram Steel Rolling – 2006 (204) E.L.T. 87**
b. **Reliance Industries – 2007 (207) E.L.T. 136**
c. **Rajaram Corn Products – 2004 (167) E.L.T. 410**
d. **V&R Autoguages – 2003 (160) E.L.T. 828**
e. **Uttam Biscutis – 2007 (78) RLT 2820**
f. **Agarwal Brothers – 1987 (27) E.L.T 334 (T)**
g. **International Steel – 1993 (65) E.L.T 552 (T)**
h. **Richarson & Cruddas – 1999 (110) E.L.T 874 (T)**
i. **Marmago Steel – 2001 (137) E.L.T. 381 (T)**

5. With regard to the case-law of M/s. Godrej and Boyce Manufacturing Company Ltd., relied upon by the learned Commissioner, the appellant contends that there are large number of decisions, wherein when the goods are removed under CT-3, action if any has to

be initiated by the officer in-charge of the 100% EOU as per the procedure laid down under the Central Excise (Removal of Goods at Concessional rate of duty for manufacture of excisable goods) Rules, 2001. In this regard they have relied on the following case-laws:

a. **Commissioner of C. Ex., Cochin Vs. BPL Systems & Projects – 2002 (144) E.L.T. 437 (Tri.-Bang.)**
b. **Commr. of C. Ex., Mumbai-II Vs. Godrej & Boyce Mfg. Company Ltd. – 2004 (172) E.L.T. 477 (Tri.-Mumbai)**
c. **Godrej & Boyce Mfg. Co. Ltd. Vs. Commissioner of C. Ex., Mumbai – 1999 (114) E.L.T. 118 (Tribunal)**
d. **Collector of C. Ex., Madras Vs. Madras Radiators & Pressings Ltd. – 1994 (69) E.L.T. 409 (Tribunal)**
e. **Vikram Enterprises Vs. Commissioner of Customs, Kandla – 2008 (226) E.L.T. 437 (Tri.-Ahmd.)**
f. **Santogen Textile Mill Limited Vs. Commissioner of C.Ex., Mumbai-II – 2007 (214) E.L.T. 386 (Tri.-Mumbai)**
g. **Hytaisun Magnetic Ltd. Vs. Commissioner of C. Ex. & Cus., Ahmedabad-II – 2008 (229) E.L.T. 634 (Tri.-Ahmd.)**

6. The appellant during the hearing has submitted the chartered Engineer certificate issued by Shri Rajesh Kharate, wherein he certified that the appellants are engaged in the manufacture of factory fabricated ducting i.e. GI hollow profiles and Rolamate flanges required for central air-conditioning system and that the company has pioneered in the four bolt Transverse duct flanges and Slip-on flange system called Rolamate, which ensures smooth, timely installation and ease of operation. Ducting system has various parts like L section, open box, off line, elbow, taper elbow, collar, closing sheets, compound, reducer, vanes, Rolamate cleats, etc. These parts are manufactured from hollow profiles of different sizes and shapes with galvanized sheets as raw-material. The galvanized sheet is processed on various machines like auto folding, forming, sheering, plasma cutting, bending, press brake, power press

machines. The ducting systems thus produced is nothing but a hollow square profiles of galvanized steel sheet along with parts like flange, gasket, corner, carriage bolt, cleat, flange nut used for delivering either warm or cool air to entire area of the manufacturing plant/ office building/ airports/railway tunnels/metro etc., which form part of the air-conditioning system. He has also enclosed the process flow chart along with the certificate giving the process details of the items manufactured by the appellant. He has also certified that he has verified the relevant drawings/catalogue and manufacturing process of M/s. Rolastar Pvt. Ltd. and that the ducting system manufactured by the appellant is part of an Air-conditioning system.

7. The learned authorized representative for the Revenue reiterated the findings of the learned Commissioner in the impugned order.

8. Heard both sides and perused the records.

9. The issue for decision in this case is whether the items supplied by the appellant to the user industry against CT-3 certificates issued by the jurisdictional Central Excise officer of the user industry are eligible for the benefit of Notification 22/2003-CE dated 31.03.2003 under entry No. 3, which inter-alia reads "Central air-conditioning equipment and air-conditioning system, spares and consumables thereof."

10. We have perused the copies of the CT-3 certificate issued by jurisdictional Central Excise officer of the user industry, wherein the CT-3 certificate specifies the items as (a) accessories for air-conditioning equipment (b) air-conditioning accessories (c) parts of air-conditioner (d) parts of air-conditioning system. We find that the benefit of Notification is denied on the grounds that the items supplied against the CT-3 certificates are not the items allowed under the CT-3

certificate. Further the Department contended that; the GI hollow profiles are only supporting connecting systems and they cannot be considered as parts, equipment or accessories to air-conditioning system or spares and consumables, thereof; the GI hollow profiles and Rolamate are classified, under Chapter Sub Heading 7304.10 and 7304.90 of the Central Excise Tariff Act, 1985, respectively and not as parts, accessories or equipment of air-conditioning system/ air-conditioning equipment and that at the time of clearance, the appellant is not aware as to how the materials are used whether as a part of air-conditioning system or parts and accessories of air-conditioning system. The show-cause alleges that; the appellant has not sought any clarification for the department to know the exact nature of the goods; they have misdeclared the goods as parts or accessories of Air-conditioner / Air-conditioning equipment / Air-conditioning systems to wrongly claim the benefit of Notification No. 22/2003 dated 31.03.2003.

11. We have perused the submissions in reply to the show-cause notice, during the hearing before the original adjudicating authority and the Chartered Engineer certificate produced at the time of hearing of this appeal before this Tribunal.

12. We agree with the contentions of the appellant that this is a case made out post audit of the appellant’s factory and that they have not suppressed any information or resorted any misstatement, since the clearances were made by them against a valid CT-3 certificates issued by the jurisdictional Central Excise officer of the user industry.

13. The Central Air Conditioners circulate cool air through a system of Supply and Return ducts. The supply ducts and registers (i.e.,

openings in the walls, floors, or ceilings covered by grills) carry cooled air from the air conditioner to the area to be cooled. This cooled air becomes warmer as it circulates through such area then it flows back to the central air conditioner through return ducts and registers. Air conditioners also dehumidify the air to improve comfort. The Central Air Conditioners are either a split-system unit or a packaged unit. In a split-system central air conditioner, an outdoor cabinet contains the outdoor heat exchanger, fan, and compressor, and an indoor cabinet contains the indoor heat exchanger and blower. In a packaged Central Air Conditioner, the heat exchangers, compressor, fan, and blower are all located in one cabinet, which usually is placed outside the building. The supply and return ducts come out from indoors through the building's exterior wall or roof to connect with the packaged air conditioner.

14. We find that the appellant has supplied ducting for an air-conditioning system to the user industry (100% EOU), which is essential for the Air Conditioning System. Hence, we find that the items supplied are a part of the air-conditioning system. The ducting system is customized as per the building layout of the user industry. Revenue has contended that the goods are classified under Chapter sub heading 7304.10 and 7304.90 and not as parts of air conditioner, and also that the appellant does not know where the goods will be used. We find that the goods are custom made and the goods are for use in an air conditioning system. The industrial establishments use Central Air-conditioning system because of the high tonnage requirement. Further, we find the goods supplied by the appellant against the CT-3 certificates are ducts customized for the Air Conditioning System, hence, they can

be considered as part of an air conditioning system and are eligible for the benefit of Notification No. 22/2003-CE dated 31.03.2003.

15. Further, the appellant has contended that, if the Department finds that the appellant has cleared goods, which are not eligible for the benefit of Notification No. 22/2003-CE dated 31.03.2003, action has to be taken by the jurisdictional officer of the user industry and not by the jurisdictional officer of the appellant. The appellant has contended that they have submitted the required re-warehousing certificate after receipt of the goods by the user industry. In this regard they have cited catena of case laws in support of their contention. We agree with the contention of the appellant.

16. In view of the above discussion, we find that the goods cleared under the impugned CT-3 certificates are used as ducting for an Air Conditioning system, hence they are covered by entry at Sl. No.3 to the Notification No. 22/2003-CE dated 31.03.2003, therefore the demand is not sustainable. Since the demand is not sustainable, the demand of interest and imposition of penalty also do not survive.

17. Therefore, the appeals are allowed with consequential relief, if any, as per law.

(Pronounced in open court on 22.12.2023)

(D.M. Misra)

Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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