CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No.362 of 2012

(Arising out of Order-in-Original No. 02/CCE/2011 dated 21.11.2011 passed by the Commissioner of Central Excise, Customs and Service Tax, Mysore.)

Shri Ramkumar Seshadri
M/s. GKC Projects Ltd.
Sy. No.37/1, 37/2, 43/P-6,
Thallur Jayapura Hobli,
Kadakola,
Mysore.

Appellant(s)

VERSUS

The Commissioner of Customs,
Central Excise & Service Tax
Mysore Commissionerate,
Vinaya Marga, Siddharatha Nagar,
Mysore.

Respondent(s)

APPEARANCE:

Ms. Purvi, Asati, Advocate for the Appellant.

Shri Rajesh Shastry, Superintendent (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21350 /2024

DATE OF HEARING: 06.11.2024

DATE OF DECISION: 06.11.2024

PER: D.M. MISRA

Heard both sides.

2. The learned advocate has submitted that in the present case, the appeal is filed by the Shri Ramkumar Seshadri, General

Manager of M/s. GKC Projects Ltd. challenging the imposition of penalty under Rule 26 of Central Excise Rules (CER), 2002. She has submitted that the appeal filed by M/s. GKC Project Ltd. bearing No. C/361/2012 has been abated by this Tribunal vide Final Order No.20476/2024 dated 07.06.2024.

2.1 Advancing the arguments, the learned advocate has submitted that M/s. GKC Projects Limited is engaged in the manufacture of MS pipes of different diameters with inlining and outer-coating with wire mesh and cement. They were awarded a contract by Karnataka Urban Water Supply and Sewerage Board (KUWSDB), Mysore under JNNURM Project for providing drinking water facility from Kabini River to Mysore city. The said contract stipulates coating of pipes at site which are required for water supply project. For this, M/s. GKC Projects Ltd. procured bare pipes and undertook the activity of inlining and outer-coating with wire mesh and cement. The activity of coating of pipe amounted to manufacture. Further, she submits that the pipes required for water supply project were exempted from payment of duty under Notification No.6/2006-CE dated 01.03.2006 (Sl. No.7 subject to production of certificate from the District Magistrate/Deputy Commissioner). M/s. GKC Projects Ltd. had produced certificate in respect of 31,410 MTs of pipes which were cleared as exempted goods. M/s. GKC Projects Ltd. also manufactured and supplied similar goods to M/s. Nagarjuna Construction Company Limited, which were not exempted from duty, hence, cleared the same on payment of applicable excise duty. Since the appellant had availed cenvat credit on pipes which were used in the manufacture of both dutiable and exempted goods and since no separate accounts were maintained by M/s. GKC Projects Ltd., they revered 5% of the value of the exempted pipes cleared without payment of duty. She submits that department had issued a show-cause notice alleging irregular availment of cenvat credit on pipes exclusively used in the manufacture of coated pipes cleared to Kabini River Project. She submits that the appellant in his statement dated 13.07.2010 categorically informed the department the process of manufacture and the reason for non-payment of excise duty and availment of cenvat credit on the pipes that were latter coated and cleared to the Kabini River Project. He submits that the imposition of penalty under Rule 26 on the appellant, who was General Manager and carried out the policy of the company, is bad in law and cannot be sustained.

3. Heard both sides and perused the records.

4. Learned Authorized Representative for the Revenue reiterated the findings of the learned Commissioner.

5. We have carefully considered the submissions advanced by both sides. The short issue involved for consideration in the present appeal is whether personal penalty is imposable on the appellant, the General Manager of M/s. GKC Projects Ltd. under Rule 26 of CER, 2002.

6. On going through the statement dated 13.07.2010 of the appellant recorded under Section 14 of Central Excise Act, 1944, we do not find any evidence which could indicate that the appellant had personally involved in availing alleged inadmissible and irregular credit on the pipes procured, which were coated and latter, cleared to Karnataka Urban Water Supply and Drainage Board, Mysore. On the contrary, he had categorically submitted that at the time of coating of the pipes, it was not clear as to whether the same would be supplied to Karnataka Urban Water Supply and Drainage Board or to M/s. Nagarjuna Construction Co. Ltd. Consequently, they have resorted to Rule 6(3)(1) of Cenvat Credit Rules, 2004 by reversing 5% of the

value of the exempted goods. Under these circumstances, holding the appellant, the General Manager as responsible and imposing penalty under Rule 26 of CER, 2002 cannot be sustained.

7. In the result, the impugned order is set aside to the extent of imposition of penalty. Appeal is allowed.

(Operative portion of the order was pronounced
in Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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