CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

E/932/2009-DB

[Arising out of Order-in-Appeal No. 294/2009 dated 22/07/2009 passed by CCE(Appeals), Mangalore]

M/S KRILOSKAR ELECTRIC CO LTD,
UNIT II GOKUL ROAD, HUBLI
Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax BELGAUM
NULL NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM, - 590001
KARNATAKA
Respondent(s)

Appearance:

Shri AJAYAN T.V, Advocate
401, THANGOOR MANA 5TH A CROSS ,
1 ST C MAIN KASTURINAGAR ,
BANGALORE - 560043
KARNATAKA
For the Appellant

Dr. J. Harish, Jt. Commissioner(AR)
For the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20306 / 2019

Date of Hearing: 01/04/2019
Date of Decision: 01/04/2019

Per : V. PADMANABHAN

The present appeal is against the Order-in-Appeal No.294/2009 dt. 22/07/2009. The appellant is a manufacturer of various types of electric motors. Dispute in the present case involves clearance of certain electric motors made in the month of September 2006. Such clearances were made without payment of duty for use in the Krishna Drinking Water Supply Project, on the basis of a Certificate dt. 24/02/2006 issued by the District Collector, Nalgonda.

2. Exemption Notification No.06/2006-CE dt. 01/03/2006 (Sl.No.7) exempts wholly from Central Excise duty, various items of machinery including instruments, apparatus and appliances etc. required for setting up of water treatment plants subject to the condition that the goods should be covered by a certificate issued by the Collector / District Magistrate / Deputy Commissioner of the District in which the plant is located. Sl.No.7 of the Notification furthers has an explanation which is reproduced below:-

> *Explanation- For the purposes of this exemption, water treatment plants includes a plant for desalination, demineralization or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal consumption, but does not include a plant supplying water for industrial purposes.*

3. The relevant Certificate dt. 24/02/2006 issued by the District Collector, Nalgonda mentions clearly that the motors are meant for water treatment plants of Krishna Drinking Water Project. The details of the goods are specified and there is no dispute about the same. The certificate further refers to the CEBEC Circular No.659/50/2002-CX dt. 06/09/2002 but mentioned the Notification No.3/2004 dt. 08/01/2004 instead of the correct Notification No.6/2006.

4. The authorities below denied the exemption claimed by the appellant for clearance of motors and demanded the duty payable on

such goods totally amounting to Rs.1,33,770/-. They further ordered payment of interest as well as penalty of Rs.5000/- under Rule 25. This is challenged in the present proceedings.

5. The appellant is represented by Shri T.V. Ajayan, learned advocate and Revenue is represented by Dr. J. Harish, Jt. Commissioner(AR).

6. The learned advocate submitted as follows:-

i. He submitted that the certificate issued by the District Collector covers the goods in dispute. The certificate clearly mentioned that the goods are meant for construction of water treatment plant under Krishna Drinking Water Supply Project. The certificate further refers to the CBEC Circular dt. 09/09/2002. The circular has been issued in the context of Notification No.47/2002 dt. 06/09/2002 which was the notification prevailing prior No.06/2006 dt. 01/03/2006. The circular states that the duty concession would be available subject to certification by the District Collector and other authorities specified in the notification.
ii. He submitted that the benefit of the notification cannot be denied only for the reason that the certificate has mentioned wrongly the Notification No.3/2004 dt. 08/01/2004. He submitted that the substantial benefit of the exemption intended for a project cannot be denied for such minor infractions.
iii. He also relied upon various case laws in which the Tribunal has set aside the demand in similar cases, in particular he refers to (a). Jain Irrigation Systems Ltd. Vs. CCE&C, Nashik [2017(358) ELT 677 (Tri. Mum.)]; (b). Lanco Industries Ltd. Vs. CCE, Tirupathi [2010(253) ELT 70 (Tri. Bang.)] and (c).

Jain Irrigation Systems Ltd. Vs. CCE, Coimbatore [2016(343) ELT 562 (Tri. Chennai)]

7. Learned AR however justified the impugned order. He submitted that the notification which was required to be specified on the date of clearance of the goods was Notification No.6/2006 dt. 01/03/2006. This notification has not been mentioned in the certificate issued by the District Collector and the appellant has also not submitted any amendment/ correction to such certificate. He also submitted that the Notification No.3/2004 mentioned in the said certificate, extends benefit for different purposes - for clearance of goods for agricultural and industrial purposes. He also submitted that the certificate is dated 24/02/2006 which is prior to the issue of Notification No.6/2006 dt. 01/03/2006. As such, he submitted that the goods cleared will not be entitled to the benefit of the duty free clearance.

8. We have heard both sides and perused records.

9. The dispute is regarding the claim for duty free benefit for goods cleared for construction of water treatment plant under Krishna Drinking Water Supply Project. At the time of clearance of the goods in September, 2006, Notification No.6/2006 extended the benefit of duty free clearance for various goods required for setting up of water treatment plants. This was subject to the condition that a certificate is issued by the District Collector or other authorities of the district in which the plant is located. The appellant in this case has submitted the certificate issued by jurisdictional District Collector dt. 24/02/2006. It is not disputed that the goods cleared are covered by the certificate but the Revenue’s objection to extend the benefit was that the certificate mentioned a different Notification No.3/2004 instead of Notification No.6/2006. Further objection is that the certificate is dt.

24/02/2006 but the clearances were made in September 2006 when the new Notification No.6/2006 was issued.

10. The Notification No.6/2006 replaced the earlier Notification No.47/2002 dt. 06/09/2002. The wording of the original notification has been retained in the new notification substantially. The CBEC Circular referred to in the certificate issued by the District Collector dt. 06/09/2002 was issued in the context of exemption Notification No.47/2002 dt. 06/09/2022.

11. After carefully perusing the certificate issued by the District Collector, we are convinced that the goods covered by the said certificate are intended for construction of water treatment plant for Krishna Drinking Water Supply Project. The fact that the certificate has mentioned a different Notification No.3/2004 dt. 08/01/2004, in our view, cannot take away the substantial benefit intended for setting up of water treatment plant for drinking water supply project. Mistake in mentioning the wrong notification number cannot be the sole reason for denying the benefit to the assessee which they were otherwise eligible as has been held in the Tribunal in the case of packing India Pvt. Ltd. Vs. CCE, Meerut-II [2012(283) ELT 390 (Tri. Del.)].

12. The Tribunal has held in the case of Lanco Industries (supra) which dealt with benefit to be granted under the same Notification has observed in para 11 as under:-

> ***11.*** *It can be seen from the above reproduced clause of Notification, that the only condition which is required to be fulfilled by an assessee in order to avail the benefit of exemption is to produce the certificate issued by Collector/District Magistrate/Deputy Commissioner of the District in which the plant is located to the effect that such goods are cleared for intended use specified under Column No. 3 of the said table. In short, a certificate given by the competent authority that the goods which are cleared are*

> *intended to be used in water supply project, is sufficient for availing the benefit of exemption Notifications.*

13. In view of the above discussions, the goods cleared by the appellant cannot be denied the exemption and we set aside the impugned order and allow the appeal.

(Order was pronounced and dictated
in Open Court on **01/04/2019**)

S.S GARG
JUDICIAL MEMBER

V. PADMANABHAN
TECHNICAL MEMBER

Raja...