CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No.1210 Of 2011

[Arising out of OIA No.16/CE/Appl/DLH-IV/2011 dated 18.02.2011 passed by the Commissioner (Appeals), Central Excise, Delhi-I, Faridabad]

M/s Walco Engineering Limited : **Appellant (s)**
13/2 Mathura Road, Faridabad

Vs

The Commissioner of Central Excise,
Delhi-IV : **Respondent (s)**
New CGO Complex, NH-IV, Faridabad,
Haryana-121001

APPEARANCE:
Ms. Krati Singh, Ms. Shreya Khunteta and Ms. Gulrukh Kaur Sindhu, Advocates for the Appellant
Shri Ravinder Jangu, Authorised Representative for the Respondent

CORAM :
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60409/2023

Date of Hearing: 30.08.2023

Date of Decision: 20.09.2023

Per:P. ANJANI KUMAR

M/s Walco Engineering Limited, the appellants, are engaged in the manufacture of cooling towers, doors, wall panels, ceiling panels, floor panels etc; the appellants were clearing the goods, to M/s Natura Green Foods Products Private Limited, availing exemption contained in Notification No.06/2006 dated 01.03.2006. On conduct of audit of the records of the appellants, Revenue was of the opinion that the subject goods do not fall under the list specified under List 4 of the notification. Accordingly, a show cause notice dated 22.07.2009 has been issued and was confirmed vide OIO dated
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25.06.2010; on an appeal preferred by the appellants, Commissioner (Appeals) vide impugned order dated 18.02.2011 has upheld the order of the Original Authority while setting aside the penalty proposed.

2. Ms. Krati Singh, learned Counsel for the appellants, submits that the goods were supplied under a Certificate issued, in Annexure-I as per the Notification, by Deputy Commissioner, Central Excise Division, Bareli as communicated to them vide letter dated 27.06.2008; the letter was in accordance with the procedure prescribed under Rule 3 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001; such availment of benefit was also communicated, vide letters sent along with ARE-3, to Deputy Commissioner, Central Excise Division, Bareli, in terms of Rule 4 of the said Rules; the appellants also reversed 10% of the total value of the subject goods cleared, as required under Rule 6 of CENVAT Credit Rules, 2004

3. Learned Counsel submits that the show cause notice proceedings are in violation of the permission granted by jurisdictional Assistant Commissioner of the manufacturer of the finished goods; the goods were supplied after following the due procedure prescribed under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001; the said certificate has neither been challenged nor got cancelled by the Department and therefore, the confirmation of the demand is not sustainable. She relies on the following case laws:

(i) Samrat Ferro Alloys Pvt. Ltd.- Final Order No.62156/2018 dated 21.03.2018.

(ii) Anant Wines & Spirits- 2016 (342) ELT 419 (Tri. Chan.)

(iii) I.O.C.L.- 2009 (246) ELT 204 (Tri. Kolkata)

(iv) Teknik Plant & Machinery Mfg. Co. P. Ltd.- 2014 (309) ELT 573. (Tri. Mumbai) [appealed to the Supreme Court but dismissed on 06.02.2019 due to monetary limit]

(v) Madurai Power Corpn. (P) Ltd.- 2008 (229) ELT 521 (Mad.).

(vi) Satyam Paper Products & Polymers P. Ltd.- 2016 (340) ELT 206 (Tri. Hyd.)

(vii) R.K. Machine Tools Ltd. – 2000 (124) ELT 794 (Tri.).

4. Learned Counsel further submits that the learned Commissioner has erred in holding that in view of the self-assessment procedure, the appellant was responsible for verifying the descriptions of the goods and the eligibility thereof for exemption before effecting clearance; learned Counsel submits that the responsibility of departmental authorities cannot be shifted to the assessee as held in Birla VXL Ltd.- 2005 (179) ELT 285 (Tri. Del.) and Sri Venkateswara Non-Ferrous Foundry- 2000 (124) ELT 572 (Tri.).

5. Learned Counsel further submits that even on merits, the contention of the Department is incorrect as the impugned order incorrectly holds that exemption notification mentions only walk-in-freezer and walk-in-cooler and does not contained the pre-fab enclosures or parts thereof; learned Counsel submits that in terms of Rule 2 (a) of the General Rules of Interpretation of Tariff "any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as

presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled". She submits that the goods cleared by the appellant constitute 60-70% of the finished goods and give the essential properties and characteristics to the finished goods; therefore, the goods fall under List 4 of the Notification; CBEC Circular No.58/1/2002 dated 15.01.2002 clarifies that refrigeration plants are basically systems comprising of various components and are not machines as a whole; the following cases support the above contention:

(i) Hero Electric Vehicles Pvt. Ltd.- 2018 (364) ELT 1090 (Tri.Chan.)
(ii) Phenix Construction Technology- 2017 (358) ELT 241 (Tri. Ahmd.)
(iii) Rakhoh Enterprises- 2016 (338) ELT 449 (Tri. LB).

6. Learned Counsel further submits that the appellant and the ultimate manufacturer- end user have complied with the procedure prescribed under Rule 3 & 4 of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001; without prejudice to the same, the duty liability, if any, on the subject goods lies on their customer in terms of Rule 6 ibid; it is their customer who has given the bond to undertake the payment of duty, if any; Circular No.354/66/2001- TRU dated 21.06.2001 expresses the same view and the same is upheld by Ravin Cables Ltd.- 2017 (352) ELT 65 (Tri. Mumbai). Learned Counsel also submits

that as the demand itself is not sustainable, the question of interest and penalty is not arisen.

7. Shri Ravinder Jangu, learned Authorized Representative for the Department reiterates the findings of the impugned order.

8. Heard both sides and perused the records of the case. Brief issue that concerns us in the instant case is as to whether, the appellants are liable to pay duty on the goods cleared by them claiming exemption under Notification No.06/2006 dated 01.03.2006 following the procedure laid down under Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The Department's case is that the goods manufactured and cleared by the appellants do not fall under List 4 of the Notification and therefore, the said exemption is not available whereas the appellants claim that they have cleared the goods on the basis of a Certificate given by the Deputy Commissioner of Central Excise having jurisdiction over their customerM/s Natura Green Foods Products Private Limited. They have received a copy of the said Certificate issued in terms of Rule 3 ibid and have also intimated the authorities as per the requirement of Rule 4. The appellants further contended that without cancelling the Certificate issue, the Department cannot recover duty denying the exemption. Moreover, recovery of duty, if any, should be from their customer who has undertaken to pay duty in terms of the said Rules and have also furnished a bond to that effect. The appellants also submit alternatively, that the itemsmanufactured by them are classifiable as

walk-in-freezers/ coolers in terms of Rule 2(a) of Interpretation Rulesto the Central Excise Tariff.

9. We find that this Tribunal in the case of Teknik Plant & Machinery Mfg. Co. P. Ltd.-. (supra) held that:

> **8.** Coming to the next issue (ii) regarding Annexure "I". It is seen that the Annexure has been signed by the appellant and then issued by the jurisdictional Central Excise authority at the end of M/s. BCML to the Assistant Commissioner of Central Excise-V, Akurdi, Pune, who has jurisdiction over the appellants. The Annexure clearly grants exemption to fuel and ash handling system used for the specified purpose of Non-Conventional renewable source Bagasse/Biomass based Cogeneration Plant. In the Annexure the appellant undertakes to follow the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001. The jurisdictional Central Excise Officer has certified that the appellants have executed bond for Rs. 45,00,000/- (Rupees forty-five lakhs only). The appellants have dispatched their goods namely fuel and ash handling system under a series of invoices over a period of time and have stated that the A.R. 3A documents supporting the invoices were received back duly acknowledged and with duly completed re-warehousing certificates countersigned by the Central Excise authorities at the end of M/s. BCML. Such copies of A.R. 3As duly certified after re-warehousing were continuously submitted to their Superintendent of Range-V, Pune. It is to be noted that these facts are not disputed by Revenue. It is also stated by the ld. Consultant that Annexure-I is still "live" and has not been cancelled by the Central Excise authorities. The Commissioner (Appeals) in her order acknowledges that the Annexure has been signed by the AC/DC Central Excise but has not raised the question of cancellation of Annexure 'I'. In fact the Commissioner (Appeals) states that Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 procedure is not applicable but at the same time does not go into the question of validity of Annexure-I or the cancellation of Annexure-I.

9. As mentioned above, Annexure-I is stated to be "live". Revenue does not controvert this fact. It is, therefore not understood how the show cause notice could be issued demanding duty without proposing to cancel the Annexure-I. At no stage of the proceedings from the time of issue of show cause notice to adjudication to the Commissioner (Appeals) order, the Annexure-I is proposed to be cancelled. This Annexure-I allowed the party to clear the goods without payment of duty. The ld. Consultant have relied on the judgment of Hon'ble High Court of Madras in the case of *Madurai Power Corpn. (P) Ltd.* v. *Deputy Commr. of C. Ex. Madurai-I* [2008 (229) E.L.T. 521 (Mad.)]. The judgment dealt with a case where show cause notices were issued without challenging the validity of Annexure or without cancellation of the Annexure. It was held by the Hon'ble High Court of Madras :

"In our opinion, there is no nexus between Section 11A and Section 35E. Section 11A does not indicate that the Legislature intended to override Section 35E. Both sections have to be read harmoniously. In the present case, Annexure-I certificate has been issued in favour of the petitioners from time to time on executing B-8 security bond and on furnishing a bank guarantee. The department has to follow the procedure under Section 35E for setting aside the Annexure-I certificate. Unless, the Annexure-I certificate is cancelled or rejected by the competent authority, by following the procedure under Section 35E, it is not permissible for the respondents to invoke Section 11A of the Act. Therefore, we are of the considered opinion that the issuance of show cause notices are without jurisdiction and liable to be struck down."

In the case of the appellants also we find that Annexure-I which clearly granted exemption to the appellants has not been cancelled. Therefore, the demand of duty against the appellants and imposition of penalty is not legal.

10. We also find that this Bench in the case of Hero Electric Vehicles Pvt. Ltd. (supra) held that goods having essential character of the items listed under Notification No.06/2006 dated 01.03.2006 are

eligible for exemption. Hon'ble Apex Court has upheld this decision. Moreover, we find that Tribunal in the case of Ravin Cables Ltd. (supra) held that the liability to discharge duty is on the end-user of goods. It was held that:

> 5. We find that in normal course, the duty should have been demanded from the manufacturer of the goods but particularly in case of the facts of the present case the goods were cleared by the appellant under NIL rate of duty not on their own but on the basis of annexure provided by the buyer which was issued by the jurisdictional Asstt. Commissioner of the buyer confirming that the goods so supplied is meant for non-conventional energy device, in such circumstances end use of the goods cannot be the responsibility of supplier, responsibility is of the buyer of the goods. It is for that purpose, as per Concessional Duty Rules, [2001] buyer is under obligation to execute bond in respect of foregone duty. If the goods procured under the said provision is not used for intended purpose or diverted otherwise, Excise duty shall be recovered by encashing bond/bank guarantee, otherwise no purpose will be served for execution of bond. We also perused particularly Rule 6 of the Concessional Duty Rules, [2001] which is reproduced below :
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> Rule 6. Recovery of duty in certain cases. - The said Assistant Commissioner/Deputy Commissioner shall ensure that the goods received are used by the manufacturer for the intended purpose and where the subject goods are not used by the manufacturer for the intended purpose, the manufacturer shall be liable to pay the amount equal to the difference between the duty leviable on such goods but for the exemption and that already paid, if any, at the time of removal from the factory of the manufacturer of the subject goods, along with interest and the provisions of Section 11A and Section 11AB of the Central Excise Act, 1944 (1 of 1944) shall apply mutatis mutandis for effecting such recoveries :
>
> Provided that if the subject goods on receipt are found to be defective or damaged or unsuitable or surplus to the needs of the manufacturer, he may return the subject goods to the original

> manufacturer of the goods from whom he had obtained these and every such returned goods shall be added to the non-duty paid stock of the manufacturer of the subject goods and dealt with accordingly.
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> Explanation. - For the removal of doubts, it is hereby clarified that subject goods shall be deemed not to have been used for the intended purpose even if any of the quantity of the subject goods is lost or destroyed by natural causes or by unavoidable accidents during transport from the place of procurement to the manufacturer's premises or from the manufacturer's premises to the place of procurement or during handling or storage in the manufacturer's premises.
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> From the above Rules, it is absolutely clear that under the provision of Concessional Duty Rules, [2001] the recovery of duty shall be made only from the user manufacturer and not by the supplier manufacturer, therefore taking into consideration the provisions of Rule 6 and the obligation of the buyer for execution of the bond, we are of the clear view that if at all exemption is not available duty can be recovered from buyer and not from the supplier. Judgments cited by the ld. Counsel clearly applicable to the facts of the present case. As per our above discussion, and applying the ratio of the decisions, impugned order is set aside. Appeal is allowed.

11. In view of the above, it is evident that the appellants have availed the exemption contained in Notification No.06/2006 dated 01.03.2006 only after the receipt of a Certificate issued by the jurisdictional Deputy Commissioner, in charge of their customer. The Department has not got the Certificate nullified/ modified/ withdrawn. Therefore, in view of the settled legal position, the Department has not made out any case for recovery of duty from the appellant. Moreover, it is the customer of the appellant who has furnished a bond undertaking to pay the duty in case, it is payable. Thus, we find that even if it is held that the appellant is not eligible to avail the

exemption, their customer is liable to pay duty in terms of the bond. On this count also, duty cannot be confirmed on the appellants. Therefore, we are of the considered opinion that the impugned order is not sustainable and the same is set aside. As we find that the appellants are not liable to pay duty on the above two counts, we are not offering any opinion on the eligibility based on classification of impugned goods.

12. As a result, the appeal is allowed.

(Pronounced on 20/09/2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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