IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/453/2011

(Arising out of Order-in-Original. No. 7/2011-C.Ex dated 20.07.2011 passed by the Commissioner of Central Excise, Trichy).

M/s. Bharat Heavy Electricals Ltd. : Appellant

Vs.

CCE & ST, Trichy : Respondent

Appearance

Shri M.N. Bharathi, Advocate
for the Appellant

Shri K.Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **28.03.2018**

FINAL ORDER No. **___________/2018**

Per Bench

M/s. Bharat Heavy Electricals Ltd., the appellant herein are the manufacturer of Boiler and parts. They had two units namely M/s. BHEL (HPBP) engaged in manufacture of boilers and M/s. BHEL (SSTP) engaged in manufacture of Seamless Steel Tubes (SS Tubes). In the month of July 2007, both these units merged. Prior to the merger, the SS Tubes were cleared to the boiler unit on which credit was availed. After merger, the assessee did not pay duty on SS Tubes and SFW Tubes as these were used for captive consumption and was covered by the exemption Notification No. 67/95 dated 16.3.95. The final products were removed by the assessee without payment of duty availing the whole exemption under Notification No. 6/2006-CE dated 1.3.2006, in terms of entry at Sl. No. 90 of the Notification. As per the said entry of the Notification, all goods supplied against International Competitive Bidding are exempted from the whole of central excise duty leviable thereon. As per the proviso to Notification No. 67/95, the exemption to inputs, captively consumed would not be available where the final products are exempted from the whole of duty or chargeable to nil rate of duty, except for the six types of clearances specified in the proviso. It thus appeared to the department that the assessee is not eligible for exemption under Notification No. 67/95, since the final products are cleared without payment of duty. A show cause notice was issued raising the above allegations and proposing to recover the duty, interest and for imposing penalties. After due process of law, the adjudicating authority confirmed the demand of duty of Rs. 10,20,95,312/- along with interest and imposed a penalty of Rs. 1,30,00,000/- under Rule 25 (1) (a) of the Central Excise Rules, 2002. Aggrieved, the appellants are before this forum.

2. On behalf of the assessee, Ld. Counsel, Shri M.N. Bharathi, submitted that the issue stands covered by the decision of the Tribunal in their own case vide Final Order No. 40085-40087/2018 dated 09.01.2018.

3. Against this, the ld. AR Shri K. Veerabhadra Reddy, JC, submitted that there is a merger of the two units and therefore the exemption under Notification No. 67/95 is not available to the assessee.

4. Heard both sides.

5. The issue under dispute has already been decided by the Tribunal in the appellant's own case vide above stated Final Order dated 09/01/2018. We do not find any grounds to deviate from the above decision taken and following the same we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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