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

Appeal Nos. E/456 & 457/2011

(Arising out of Order-in-Appeal Nos. 30 & 31/2011 dated 30.6.2011 passed by the Commissioner of Central Excise (Appeals), LTU, Chennai)

M/s. Chemplast Sanmar Ltd. Appellant

Vs.

CCE, LTU, Chennai Respondent

Appearance

Shri V.S. Manoj, Advocate for the Appellant
Shri R. Subramanian, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **10.05.2018**

Final Order Nos. **41480-41481 / 2018**

Per Bench

The issue involved in both these appeals being the same, they were heard together and are disposed by this common order.

2. The appellants are manufacturers of Poly Vinyl Chloride (PVC) pipes and fittings and PVC resins and are registered with the Central Excise Department during the months of July 2008

to October 2008, they cleared PVC pipes for use in drinking water supply project without payment of duty in terms of Notification No. 6/2006-CE dated 1.3.2006. Periodical show cause notices were issued proposing to deny the benefit of notification alleging that the supplies made to the contractor is not eligible for exemption for the reason that from the certificate issued by the relevant authority, it is not clear whether the pipes are used to draw water from the source to storage reservoir or as a part of integral water supply project. After due process of law, the original authority confirmed the demand, interest and imposed penalties. In appeal, Commissioner (Appeals) confirmed the demand but set aside the penalties. Aggrieved, the appellants are now before this Tribunal.

3. The ld. counsel Shri V.S. Manoj appearing for the appellants submitted that the Commissioner (Appeals) has not considered the documents submitted by the appellant during the personal hearing as well as during the adjudication proceedings. The benefit of notification has been denied by the adjudicating authority stating that there was a delay in filing the required certificate of the District Magistrate. However, the Commissioner (Appeals) had accepted the certificate condoning the delay in producing the certificate. As per the impugned order, the Commissioner (Appeals) held that the appellants are

not eligible for exemption in terms of Sl. No. 7 Col. No. 3 of the Table to Notification 6/2006. Thus, it was held that the appellant has not produced sufficient evidence to establish the condition in Sl. No. 7(3) wherein only the pipes of outer diameter exceeding 20cms when used as integral part of water supply projects is exempted. Thus, the appellant having not produced evidence to show whether the pipes are used for drawing water from the original source to the reservoir or used as an integral part of the water project, the Commissioner (Appeals) has upheld the confirmation of demand. He adverted to the certificate dated 19.11.2008 and submitted that it is clearly stated in the said certificate that the pipes are intended to be used for pumping of water from the Bhimar river / source to treatment plant and then to storage reservoirs. It is not necessary to establish the diameter of the pipes used by the appellant and the appellant has complied with Sl. No. 2 of Sl. No. 7 of the notification. A revised certificate dated 21.10.2008 issued by the District Magistrate would also show that the pipes were used from the Krishna River / source to treatment plant at Yalparatti and from there to storage reservoirs. The benefit has been denied by wrongly interpreting the application of notification and also without considering the certificates produced by the appellant. He prayed that the demand may be set aside.

4. The ld. AR Shri R. Subramaniam supported the findings in the impugned order.

5. Heard both sides.

6. For better appreciation, the relevant part of the Notification is reproduced as under:-

S. No.	Chapter or heading or subheading or tariff item of the First Schedule	Description of excisable goods
7	84 or any other Chapter	The following goods, namely:- (1) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components / parts required for setting up of water treatment plants: (2) Pipes needed for delivery of water from its source to the plant (including the clear treated water reservoir, if any, thereof) and from there to the first storage point; (3) Pipes of outer diameter exceeding 20 cms when such pipes are integral part of the water supply projects. 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.

7. As can be seen from the above notification, Sl. No. 2 does not prescribe any diameter for the pipes that is to be used whereas Sl. No. 3 prescribes that the pipes of outer diameter exceeding 20cm will be eligible for exemption when such pipes

are integral part of the water supply project. The lower authority has discussed that the appellants have not been able to establish the usage of the pipes used. The certificate produced by the appellant dated 19.11.2008 issued by the District Magistrate reads as under:-

> *"As such on the basis of report of the Executive Engineer, P.R.E. Division, Yadgir, it is hereby certified that the materials detailed in the Annexure to this certificate are intended to be used for pumping of raw water from Bhima river to treatment plant and there to storage reservoirs at Anur –K and8 other villages in Yadgir Taluk, dist: Gulbarga."*

8. Further, the revised certificate dated 21.10.2008 also reads as under:-

> *"This is to certify, that the said materials are required for pumping raw water from Krishna river to treatment plant at Yalparatti and from there to storage reservoirs at Khemalapur and other 5 villages in Raibag taluka of Belgaum District. And also items of machinery including instruments, apparatus and appliances, auxiliary equipments and their components / parts required for the setting up of water treatment plants intended to treat water and to make it fit for consumption of humans."*

9. From the above certificate, it is clear that the pipes are used for carrying water from the source to treatment plant and to the reservoirs in various villages. For such reason, it is established that the pipes are used as integral part of water project and also for drawing water from the original source to the reservoir.

10. For these reasons, we find that the appellant having fulfilled the condition in the notification is eligible for the benefit of exemption from payment of duty. In our view, therefore, the demand cannot sustain and requires to be set aside, which we hereby do. The impugned order is set aside and the appeals are allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**) Member (Technical)	(**Sulekha Beevi C.S.**) Member (Judicial)

Rex