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

S.No.	Appeal No.	Appellant	Respondent
1.	E/Misc/40460/2018 E/41979/2014	L&T Valves Limited	Commissioner of Central Excise, Chennai IV
Arising out of Order in Original No.6/2014 dt. 28.5.2014 passed by Commissioner of Central Excise, Chennai - IV			
2.	E/42143/2014	L&T Valves Ltd.	Commissioner of Central Excise, Chennai IV
Arising out of Order in Original No. 14/2014 dt. 30.6.2014 passed by Commissioner of Central Excise, Chennai - IV			
3.	E/41454/2016	L&T Valves Ltd.	Commissioner of Central Excise, Chennai IV
Arising out of Order in Appeal No.168/2016 (CXA-II) dt. 26.4.2016 passed by Commissioner of Central Excise (Appeals-II), Chennai			

Appearance :

Shri Sujit Ghosh, Advocate
Shri Mannat Waraich, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing : 01.11.2018
Date of Pronouncement : 10.12.2018

FINAL ORDER No. 43048-43050 / 2018

Per Madhu Mohan Damodhar

Appellants were engaged in the manufacture of industrial valves and parts falling under Chapter 84 of the Central Excise Tariff Act (CETA), 1985. Appellants had cleared industrial valves without payment of duty against International Competitive Bidding (ICB) by availing exemption under Notification

No.6/2006-CE dt. 1.3.2006 Sl.No.91, condition No.19. As per condition No.19, goods supplied against ICB are exempt from payment of duty under the notification provided the said goods are exempt from payment of Customs duty and Additional Duty of Customs when imported into India. It appeared to the department that for availing exemption under Notification No.6/2006-CE, the goods should also be exempted under Customs Notification No.21/2002-Cus. by fulfilling the conditions imposed thereon inter alia, condition 32 (b) (i) viz. production of a certificate from a duly authorized officer of the Director General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India and that neither the appellant nor the sub contractor had produced such a certificate. Hence show cause notice dt. 08.08.2008 was issued to the appellants inter alia demanding duty of Rs.86,00,028/- with interest and also imposition of penalty under Rule 25 of Central Excise Rules, 2002. In the first stage of adjudication, Commissioner vide order dt.19.02.2009 confirmed the demand of duty and interest proposed in the said SCN and also imposed penalty of Rs.1,00,000/-. In appeal filed by the appellant, the Tribunal vide a Final Order No.866-867/2012 dt. 23.7.2012 held as follows :

> "13. The present dispute is arising basically because of the fact that excise duty exemption has been provided with reference to exemption for customs duty and the conditions that are appearing in the customs notification has not been adapted to suit claiming excise duty exemption. There is necessity for making changes if the exemption from excise duty is to be meaningful. In the first place, there is no importer involved when goods are manufactured in India are supplied in India. Similarly customs assessment and duty payment are before clearance of the goods whereas for excise levy the system is of self assessment and duty payment at the end of the month. So the

requirement of producing the certificate also needed suitable change. Similarly, customs notification is applicable to a contractor or a sub contractor when they import goods. So confusion arises as to who has to satisfy the condition whether the manufacturer of the goods or the purchaser. Comparing with the situation of imports the purchaser has to satisfy the condition. But these are all logical interpretations and not explicitly provided in the notification. When goods are imported by the contractor or sub contractor, the end use verification becomes easy with reference to the auditing the books of accounts of these persons. A mechanism will be required to ensure proper end-use in the case of goods manufactured in India and supplied to such contractor or sub-contractor which has not been prescribed in the excise notification. Now the option before us is to hold that excise duty exemption under such notification will not be applicable at all to any clearances by a strict interpretation of the conditions as canvassed by Revenue or to hold that excise duty exemption is to be made available subject to necessary changes read into the conditions prescribed under customs notification. The former interpretation is not justified because to our mind it is implied that the condition prescribed in Customs Notification is to be read mutatis mutandis for excise exemption. Once the latter proposition is agreed to we are of the view that the correct interpretation is that the goods should have been supplied to a contractor or a sub contractor who has used the goods in oil exploration activity the excemption should be available. In the present case, such condition has been satisfied in the case of supplies to M/s.Reliance Industries ltd. though after clearance.

....

16. In the facts of this case there is a justifiable reason to hold so because there can be some doubt about the time of production of certificate for excisable goods because the condition comes through adaption of condition prescribed in a customs notification. This case involves a substantial right of the appellant to claim an exemption intended for import substitution at competitive prices we are of the view that the exemption cannot be denied for the reason that the certificate is produced later. We have not verified the certificates in detail. We are remitting the matter to the adjudicating authority to cause verification whether the certificate produced later meet the requirement of the notification.

....

19. So we uphold the demand in respect of supplies made to M/s.Oil India Ltd and Jindal Power Ltd. along with appropriate interest. The appellant is given an option to pay the penalty equal to 25% of the duty demand within 30 days of receipt of this order. If payment is not made accordingly the penalty equal to duty demand becomes payable. However, following the decision of Gujarat High Court in the case of CCE Vs Harish Silk Mills Pvt.Ltd. – 2010 (255) ELT 393 (Guj.), we give an option to pay 25% of the duty involved as penalty within 30 days of receipt of this order because such option was not extended by the adjudicating authority. If payment is not made within such time amount equal to the duty amount will be payable as penalty.

20. Thus the exemption is extended in cases where the appellant is able to produce the necessary certificate as prescribed in the notification and explained above. The appellant shall produce such certificates before adjudicating authority for verification within 30 days of receipt of the order. In other cases duty demand is confirmed along with interest and penalty with option to pay 25% of the duty amount as penalty within 30 days of receipt of the order."

Thereafter, the appellants filed refund application for refund of duty paid under protest on clearance of industrial valves to Reliance Industries Ltd. The Asst. Commissioner vide order dt. 25.1.2013 sanctioned refund of Rs.77,95,480/-. However, department issued show cause notice dt. 19.3.2014 seeking to recover the said refund amount of Rs.77,95,480/-. In adjudication, the Commissioner vide an Order-in-Original No.14/2014 dt.30.06.2014 held that the said refund was sanctioned erroneously by the original authority and ordered recovery of the amount with interest. Hence Appeal No.**E/42143/2014.**

2.1 Pursuant to CESTAT directions, Commissioner passed a de novo adjudication order No.6/2014 dt.28.5.2014 inter alia, denying benefit of exemption for payment of excise duty in respect of supplies made to Reliance Industries Ltd. on the ground that documents supplied by the appellants were not in consonance with the conditions under Customs exemption notification. The Commissioner also confirmed duty demand of Rs.78,06,738/- in respect of goods cleared to Reliance Industries Ltd. along with interest thereon. Penalty of Rs.77,15,962/- was also imposed under Rule 25 of Central Excise Rules, 2002, however giving option to pay reduced penalty 25% of the penalty subject to payment of penalty within 30 days of the order. Hence Appeal No. **E/41979/2014.**

2.2 So also during the period July 2008 to December 2008, appellant had cleared industrial valves valued Rs.3,49,22,412/- to their customer M/s.Cairn Energy India Pvt. Ltd. under Notification No.6/2006-CE and the duty was paid under protest availing exemption benefit under notification No.6/2006-CE as amended. Subsequently, appellants filed a refund claim for Rs.49,11,485/- being Central Excise Duty of Rs.48,49,935/- with interest of Rs.61,550/-. Original authority vide order dt. 25.4.2014 sanctioned the refund claim. On appeal by the department, Commissioner (Appeals) vide order 26.4.2016 found that the appellants had not fulfilled the conditions laid down in Notification No.21/2002-Cus. and hence rendered themselves ineligible for grant of exemption under notification No.6/2006-CE. For these reasons, Commissioner held that refund

sanctioned by the original authority is erroneous and should be recovered according to provisions of law and allowed the department's appeal. Hence Appeal No.**E/41454/2016.**

3. When the matter came up for hearing, on behalf of the appellants Ld. Advocate Shri Sujit Ghosh made oral and written submission which can be broadly summarized as under :

i) In the impugned order No.6/2014 dt. 28.05.2014 (impugned order for Appeal E/41979/2014) as also order No.14/2014 dt. 30.06.2014 (impugned order for Appeal E/42143/2014) the Commissioner has gone beyond the parameters for de novo adjudication as directed by the CESTAT vide Final Order No.866-867/2012 dt. 23.07.2012. The Commissioner, while admitting that the directions of the CESTAT in their remand order were limited only to the verification of certificates, went on to hold that for satisfying the conditions in the Customs Exemption Notification, other relevant conditions and documents would also need to be verified which clearly goes beyond the directions of the CESTAT.

ii) The CESTAT remand order nowhere mentioned that for verification of the certificates, the contents therein which are essentially for the purposes of the Customs Exemption Notification should *mutatis mutandis* apply. Instead, it specifically stated that the verification of certificates was such that the certificates produced met with the requirements to the Customs Exemption Notification. Such requirement was indeed met in the present case as :

a. The Customs Exemption Notification required that the certificates had to be issued by the DGH indicating end use- In the present case, as the certificate was issued by the DGH, such condition stood satisfied.

b. The Customs Exemption Notification required that benefit would be available when the supply of goods is made to a contractor. This condition was satisfied by the Appellant in as much as it had supplied the industrial valves to its contractor.

c. The Customs Exemption Notification required submission of an undertaking by the main contractor if any of the conditions of the Customs Exemption Notification are not complied with – The aforesaid undertaking has been duly provided by the Appellant in the present case.

iii) On an overall basis the thrust of the CESTAT remand order was essentially to ensure that the exemption be given only to cases where goods are supplied for the intended purpose of oil exploration and thus the end use for which the exemption is intended must be met. The Hon'ble CESTAT in its remand order had also observed that since substantial rights are involved the conditions in the Customs Exemption Notification cannot be read mutatis mutandis and that the Customs Exemption Notification should be suitably adopted for excise exemption. The Hon'ble CESTAT in its remand order had also observed that the very purpose of the excise exemption is to encourage import substitution. Further, while denying excise exemption to OIL and JPL the remand order specifically observed that the exemption is being denied as the end use could not be satisfied.

Considering the overarching ratio borne out of the CESTAT remand order, it is amply clear that so long as the Appellant is able to satisfy the end use

condition, the exemption could never have been denied. Copious documentary evidence in the form of affidavit, undertaking as also project authority certificates (which is a statutory document under the FTP to facilitate grant of deemed export benefits to the present supplies made to oil exploration projects) were submitted by the Appellant to demonstrate end use. Regrettably the Ld.Commissioner instead of appreciating the substance of the documentary evidence proving end use has rejected them on irrelevant grounds.

iv) In any case, in light of the decision of the Hon'ble Bombay High Court in the case of **CCE Nashik v. Kent Introls, 2016 (331) ELT 77 (Bom.)** upholding the decision of CESTAT Mumbai **in the case of Commissioner of Central Excise, Nashik v. Kent Introl Pvt. Ltd.,** 2014 (301) ELT 84 (Tri. Mumbai), the excise exemption is only predicated on the condition that the supplies are to be made under ICB and other conditions as mentioned, being applicable to importers and not domestic manufacturers were not required to be satisfied. The relevant portion has been reproduced hereunder :

> *"With the assistance of learned counsel, we have perused the memo of appeal and all annexures thereto including the relevant notification which has been reproduced t Page 11 of the paper book. Condition No.29 is only relied upon but a bare perusal thereof would indicate that the Tribunal has held that Condition No.29 (c) (iv) is inapplicable to the assessee before it. As far as Condition No.29 (c)(i) to (iii) is concerned, the Tribunal found that al such stipulations, as are referred have to be fulfilled by the importers of goods. These are not applicable to the [domestic manufacturer]. Upon perusal of Condition No.29, we are satisfied that the Tribunal's factual conclusion does not raise any substantial question of law. Once the Revenue does not dispute that the assessee is a domestic manufacturer and has to satisfy only one of those conditions, particularly that the supply must be of goods in relation to contracts awarded under*

> *international competitive bidding procedure, then that condition is squarely satisfied. The condition such as Condition No.29 which pertains to an importer of the goods need not be, in the given facts, satisfied by the [domestic manufacturer] and that is the conclusion reached by the Tribunal.*

It is further submitted that it is a well settled principle of law that in the absence of a contrary decision by the jurisdictional High Court, it is just and proper for the Tribunals to follow the decision of the High Court.

On this basis, it is submitted following the decision of the Hon'ble Bombay High Court, the Appellant is not bound to satisfy the conditions as laid down under the Customs notification and is thereby entitled to the exemption from excise duty on the sole condition that the supplies are made under ICB.

v) The above arguments are with respect to Appeal E/41979/2014. If the substantial issues forming part of this appeal are found in favour of the appellant, in consequence, it would have the same effect with respect to other appeals.

4.1 On the other hand, Ld. A.R Shri B. Balamurugan supports the impugned orders. He submits that for availing exemption under Central Excise notification No.6/2006-CE, the goods should also be exempted under Customs Notification No.21/2002-Cus.,hence the conditions imposed in the Customs notification will also require to be satisfied. In the impugned orders, the adjudicating authorities have correctly gone into the aspect of whether the conditions set out in the Customs notification have also been satisfied properly. Since the conditions have not been satisfied, by implication, the appellants cannot claim benefit under Central Excise Notification No.6/2006-CE.

4.2 It is important to ascertain whether other relevant conditions are also looked into apart from verification of the invoices under the goods were cleared. The adjudicating authority has found that the affidavit and undertaking have been produced by appellant at a much later date after clearances have taken place.

5. Heard both sides and have gone through facts.

6.1 In the previous round of litigation before this very Tribunal, vide Final Order No.866-867/2012 dt. 23.7.2012, while upholding the demands in respect of supplies made to Oil India and Jindal Power Ltd. along with appropriate interest, had passed the following orders in respect of clearances made to supplies made to Reliance Industries Ltd. The relevant portion of the order is as under :

> *16. In the facts of this case there is a justifiable reason to hold so because there can be some doubt about the time of production of certificate for excisable goods because the condition comes through adaption of condition prescribed in a customs notification. This case involves a substantial right of the appellant to claim an exemption intended for import substitution at competitive prices we are of the view that the exemption cannot be denied for the reason that the certificate is produced later. We have not verified the certificates in detail. We are remitting the matter to the adjudicating authority to cause verification whether the certificate produced later meet the requirement of the notification.*
>
> *17. We are of the view that the exemption is available only in cases where necessary certificates too ensue its proper end-use is produced which has been done by the appellant onl in the case of supplies to Reliance Industries Ltd. .....*
> *....*

> *20. Thus the exemption is extended in cases where the appellant is able to produce the necessary certificate as prescribed in the notification and explained above. The appellant shall produce such certificates before adjudicating authority for verification within 30 days of receipt of the order. In other cases duty demand is confirmed along with interest and penalty with option to pay 25% of the duty amount as penalty within 30 days of receipt of the order."*

6.2 It is therefore evident that the remand directions of CESTAT in the said final order were in a very narrow compass. The matter was remanded to the adjudicating authority only to cause verification whether the certificates produced later meet the requirement of the notification. The said Tribunal's order also clarified that the exemption is available only in cases where necessary certificates to ensure its proper end-use is produced. Quite evidently, beyond these directions, the adjudicating authority should not have caused further tooth-combing of the matter.

6.3 We are however constrained to note that the said remand directions of the Tribunal have been given the go-by and instead, the adjudicating authority in the impugned order No.06/2014 dt. 28.05.2014 for reasons best known to him, has chosen to analyze and arrive at conclusions on many other extraneous aspects. For example, whereas the Tribunal has specifically permitted the delayed submission of certificates for the purposes of claiming exemption, the lower authority in para 5.4 of the impugned order has concluded that exemption cannot be allowed since certificates were not submitted at the time of clearance.

6.4 In para 5.9 of the impugned order, the lower authority has stated that status of appellant as sub-contractor has not been made clearly beyond doubt. We are unable to fathom how this conclusion has been arrived, since perusal of the Project Authority Certificate issued by Reliance Industries to the contractor, clearly depicts that M/s.Audco India Ltd. (as the appellant then was called) is a sub-contractor.

6.5 It is also noted that while not disputing the genuineness of the certificates submitted by the appellants, the lower authority has raised frivolous objections in respect of the Essentiality Certificate eg. that they are not addressed to the authorities concerned, that it is not titled as “Essentiality Certificate”; that relevant notification number and conditions thereof have not been cited; that period of validity of documents have not been specified and so on. The lower authority has even termed these discrepancies as “incurable defects”.

6.6 While in para 5.3, the adjudicating authority concedes that the main question to be determined is eligibility of Essentiality Certificate that has been produced by appellant subsequent to their clearances, however, we find that the lower authority has chosen to examine whether condition No.32 of Customs Notification 21/2002-Cus.,which is a set of conditions that has been satisfied if same goods are imported into India, have been complied with by the appellants. We are afraid such an exploration was nowhere in the scope of the remand directions in the Tribunal’s earlier final order.

6.7 We therefore find that the directions of Tribunal in their final order have not been adhered to.

6.8 In any case, the dispute whether for benefit of Notification No.6/2006-CE, the conditions of Customs Notification No.21/2002-Cus. are required to be fulfilled, has been laid to rest by the Hon'ble High Court of Bombay in the case *CCE Nashik Vs Kent Introl Pvt.Ltd*. - 2016 (331) ELT 77 (Bom.). The Hon'ble High Court has held that such conditions of Customs notification are applicable only to the importer order and not to a domestic manufacturer. The relevant portion of the judgment is reproduced as under :

> **"8.** With the assistance of learned counsel, we have perused the memo of appeal and all annexures thereto including the relevant notification which has been reproduced at Page 11 of the paper book. Condition No. 29 is only relied upon but a bare perusal thereof would indicate that the Tribunal has held that Condition No. 29(c)(iv) is inapplicable to the assessee before it. As far as Condition No. 29(c)(i) to (iii) is concerned, the Tribunal found that all such stipulations, as are referred, have to be fulfilled by the importers of goods. These are not applicable to the [domestic manufacturer]. Upon perusal of Condition No. 29, we are satisfied that the Tribunal's factual conclusion does not raise any substantial question of law. Once the Revenue does not dispute that the assessee is a domestic manufacturer and has to satisfy only one of those conditions, particularly that the supply must be of goods in relation to contracts awarded under international competitive bidding procedure, then that condition is squarely satisfied. The condition such as Condition No. 29 which pertains to an importer of the goods need not be, in the given facts, satisfied by the [domestic manufacturer] and that is the conclusion reached by the Tribunal."

7. Viewed in this light, the very edifice on which the proceedings related to these appeals have been initiated by the department will, crumble. In consequence, the impugned order No.6/2014 dt. 28.5.2014 (impugned order for Appeal E/41979/2014) cannot be sustained and will require to be set aside,

which we hereby do. **Appeal No.E/41979/2014** is therefore allowed with consequential benefits, if any as per law.

8. As a concomitant, impugned order No.14/2014 dt. 30.06.2014 (impugned order for Appeal E/42143/2014) and impugned order No.168/2016 dt. 26.4.2016 (impugned order for Appeal E/41454/2016) wherein the refunds of Rs.77,95,480/- and also Rs.49,11,485/- respectively sanctioned to appellants in respect of clearances made claiming the very same Central Excise Notification No.6/2006-CE have been inter alia held as erroneous refunds, will also not sustain and are therefore set aside. The related appeals **E/42143/2014** and **E/41454/2016** are also therefore allowed with consequential benefits, if any, as per law.

9. The MA filed by appellant in Appeal E/41979/2014 praying to raise additional grounds stands disposed.

(order pronounced in court on 10.12.2018)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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