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

Appeal No. E/264/2012

(Arising out of Order-in-Appeal No. 14/2012 (M-II) dated 16.2.2012 passed by the Commissioner of Central Excise (Appeals), Chennai)

Commissioner of GST & Central Excise
Chennai Appellant

Vs.

M/s. The EIMCO KCP Ltd. Respondent

Appearance

Shri L. Nandakumar, AC (AR) for the Appellant
Shri M.N. Bharathi, Advocate 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: **22.11.2018**

Final Order No. **43019 / 2018**

Per Bench

Brief facts are that the respondents are engaged in manufacture of filtration equipment falling under CETSH 84212190 of CETA, 1985. On scrutiny of records for the months of December 2007 to May 2008, it was found that they had cleared filtration equipment without payment of duty claiming exemption under Sl. No. 91of Notification No.6/2006-CE dated 1.3.2006 for supply against International Competitive Bidding.

As it appeared that the exemption was available only to M/s. VA-Tech Wabag Ltd., as they were the actual bidders and there was no certificate issued by any authority to the effect that the goods supplied by the appellant to M/s. The Eimco-KCP Ltd. were for use in International Competitive Bidding mega project, the department was of the view that Condition No. 19 of the notification was not satisfied. Show cause notice was issued proposing to demand the duty along with interest and also for imposing penalties. After due process of law, the adjudicating authority denied the exemption and confirmed the demand, interest and imposed penalty of Rs.5.00 lakhs. In appeal, Commissioner (Appeals) vide order impugned herein observed that the respondents are eligible for exemption of the notification and set aside the demand, interest and penalties. Aggrieved, the department has come in appeal.

2. On behalf of the department, ld. AR Shri L. Nandakumar supported the grounds of appeal.

3. The ld. counsel Shri M.N. Bharathi appeared for the respondent and submitted that though the respondents are not the participants of International Competitive Bidding, M/s. VA-Tech Wabag Ltd. has participated in the international competitive bidding and the project authorities M/s. NTPC has issued certificate to M/s. VA Tech Wabag Ltd. The respondent is a sub-contractor as seen from the certificate issued by the project authority and therefore the goods supplied by the

respondent would satisfy Condition 19 of the said Notification. The issue is decided in the following cases:-

a. Commissioner of Customs, Mumbai Vs. Rochem Separation Systems Ltd. Ltd. – 2010 (251) ELT 438

b. Commissioner of Central Excise, Puducherry Vs. Caterpillar India Ltd. – 2013 (297) ELT 8 (Mad.) upheld by the Hon'ble Supreme Court in 2016 (335) ELT A27 (SC)

c. Kanta Rubber Pvt. Ltd. Vs. Commissioner of Customs – 2017 (353) ELT 124

d. Toshniwal Industries Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur – 2017 (5) GSTL 179.

4. Heard both sides.

5. The respondents have supplied the goods for water treatment plant for human consumption and the only ground for disallowing the benefit of Notification 6/2006 is that the respondents who is a sub-contractor has not participated in the International Competitive Bidding. It is not disputed that M/s. VA-Tech Wabag Ltd. have participated in the International Competitive Bidding. The issue as to whether the respondents themselves have to take part in the bidding has been settled by the decisions relied by the ld. counsel for the appellant. In Toshniwal Industries Pvt. Ltd. (supra), the very same issue was decided and the relevant portion is as under:-

> *"6. After hearing both sides and on perusal of record, it appears that the Tribunal has decided (supra) that it is not necessary that the manufacturer supplying the goods to the mega power projects should have participated in International Competitive Bidding so long as the goods are*

> *supplied to such contract was awarded to a person who took part in the International Competitive Bidding and it is proved that the goods were in fact supplied to such power project and the equipments were installed at the project site. What we noticed is that neither the benefits under Notification No. 21/2002-Cus. (Sr. No. 400) nor the exemption under Notification No. 6/2006-C.E. (Sr. No. 91) is subject to any conditions stipulated in Foreign Trade Policy. BHEL as the main contractor could have imported the impugned goods without payment of Customs duty in view of Notification No. 21/2002-Cus. (Sr. No. 400). Notification No. 6/2006-C.E. Sr. No. 91 only makes it possible to procure such goods locally without payment of excise duty if BHEL so desires and BHEL opted for local procurement from the assessee-appellants. So, naturally the assessee-appellants should be eligible for exemption under Notification No. 6/2006-C.E. (Sr. No. 91). Prima facie, the deemed export benefits dealt within para 8.6.1 and 8.6.2 deal with incentive granted by DGFT and not exemption granted by Ministry of Finance and there is no reason to refer to those conditions so long as they are not referred to in the Notification claimed. The main point to be noticed is that relief from excise duty is not granted through the mechanism of deemed export but administered through exemption notification issued. We note that Revenue has not made any case that any of the conditions specified in the exemption notification is not fulfilled. It is already decided by the Tribunal (supra) that exemption cannot be denied for the reason that sub-contractor did not take part in International Competitive Bidding."*

From the above decisions, we are of the view that the impugned order does not call for any interference. The same is upheld and the appeal filed by the department is dismissed.

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

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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