IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]

Appeal Nos.: E/465/2012 & E/40316/2015

Sl. No.	Appeal No.	Appellants	Respondents
1.	E/465/2012	M/s. Perfect International Fabricators (P) Ltd., Trichy	The Commissioner of G.S.T. & Central Excise, Tiruchirappalli
Arising out of Order-in-Appeal No. 169/2012 dated 31.07.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirappalli			
2.	E/40316/2015	M/s. Perfect International Fabricators (P) Ltd., Trichy	The Commissioner of G.S.T. & Central Excise, Tiruchirappalli
Arising out of Order-in-Original No. 08/2014-C.Ex. dated 30.10.2014 passed by the Commissioner of Central Excise & Service Tax, Tiruchirappalli			

Appearance:-
Shri. J. Shankaraman, Advocate
for the Appellant

Shri. S. Govindarajan, 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: **22.03.2019**

Final Order Nos. 40588-40589 / 2019

Per Bench :

The facts of the matter are that appellants are manufacturers of boiler components. During the period of dispute viz. August 2009 to September 2009, they had cleared such components without payment of duty claiming exemption in terms of Sl. No. 91 of the Central Excise Notification No. 06/2006-CE dated 01.03.2006 as amended, available for materials required for manufacture of goods to be supplied against International Competitive Bidding (ICB).

2.1 Pursuant to audit, the Department took the view that the appellants were eligible for the exemption. The tax amount, as pointed out by the Department, was paid up by the appellants along with interest. Subsequently, a Show Cause Notice was issued on 10.03.2014 *inter alia* proposing demand of an amount of Rs. 58,94,028/- with interest and imposition of penalties under various provisions of law. In adjudication, the Commissioner vide impugned Order dated 30.10.2014 upheld the proposals for demand of duty with interest and also imposed equal penalty under Section 11AC of the Central Excise Act, 1944. Hence, Appeal No. E/40316/2015.

2.2 Subsequently, the appellants filed a refund claim seeking refund of the duty paid by them on 24.08.2011 for an amount of Rs. 2,13,609/- which was rejected by the Original Authority vide Order dated 21.11.2011 on the ground of time-bar. In appeal, the Commissioner (Appeals) vide Order dated 31.07.2012 upheld the order passed by the Original Authority. Hence, Appeal No. E/465/2012.

3. Today when the matter came up for hearing, Ld. Advocate Shri. J. Shankaraman appearing on behalf of the appellants made oral and written submissions which are broadly summarized as under :

<u>With respect to Appeal No. E/40316/2015 :</u>

(i) The boiler components were being supplied to M/s. BHEL, Trichy, who, in turn, had supplied boilers to Mega Power Project at Ennore and hence, the clearances were very much eligible for benefit of exemption under Notification No. 06/2006-CE;

(ii) M/s. BHEL vide their letters dated 24.04.2009 and 05.03.2010 had informed the jurisdictional Superintendent of Central Excise that the appellants were eligible for the exemption under the said Notification. Subsequently, however, M/s. BHEL sent an e-mail to the appellants stating that their corporate office has informed them about non-eligibility of the Excise Duty exemption on the goods cleared to Mega Power Project certificate issued by North Chennai Power Corporation;

(iii) Based on this e-mail, the Audit party of the Department raised an objection with regard to the earlier clearances made by the appellant for the said Power Project during the period from August 2009 to March 2010. The jurisdictional Superintendent of Central Excise issued a letter dated *inter alia* demanding an amount of Rs. 48,01,407/- of such clearances.

(iv) The Ld. Advocate takes us to page 68 of the Appeal Book to point out that the amounts had been paid up by the appellants and the same had been intimated to the Department vide letter dated 30.08.2010.

(v) Nonetheless, after a gap of around four years, the Show Cause Notice was issued on 10.03.2014 proposing invocation of extended period of limitation for recovery of the said amount paid and also imposition of penalty under Section 11AC of the Act. As the appellant had paid up the amount on being pointed out by the Audit party, they were very much eligible for the benefit of the provisions of Section 11A(2B) of the Central Excise Act, 1944. In fact, no Show Cause Notice should have been issued to them. Further, there is no ground for invoking the extended period or, for that matter, alleging suppression, mis-statement or intention to evade payment of duty. Hence, the Show Cause Notice is hit by limitation.

(vi) Further, the penalty under Section 11AC ibid is also not imposable. As the appellants have already paid up the duty liability of Rs. 56,80,419/- along with interest and the same has been appropriated in the impugned Order, on their own account, they are not contesting the demand of duty. However, they pray for setting aside the penalty imposed under Section 11AC.

<u>With respect to Appeal No. E/465/2012 :</u>

(i) The dispute is with regard to the refund amount of 2,13,609/-

(ii) Ld. Advocate submits that as they are not contesting the demand of duty *per se* on the clearances made by them, they are not contesting this appeal at this stage.

4.1 On the other hand, Ld. AR Shri. S. Govindarajan appearing on behalf of the respondent supports the impugned Orders.

4.2 He draws our attention to paragraph 17 of the impugned Order dated 30.10.2014 wherein the adjudicating authority has analyzed the matter and clearly found that it was a case of mis-declaration and hence, the extended period of limitation can very well be invoked. Ld. AR also drew our attention to paragraph 18 of that Order wherein the Commissioner has held that the assessee are not eligible for waiver of Notice under Section 11A(2B) of the Central Excise Act, 1944.

5. Heard both sides and have gone through the facts of the case.

6. From the facts on record it is very clear that the appellants and/or M/s. BHEL had, on more than one occasion, informed the jurisdictional Superintendent of Central Excise that the clearances of boiler components are being made without payment of duty in terms of Notification No. 06/2006-CE. The appellants therefore were very much under a *bona fide* belief that they were eligible for the exemption based on the certificates issued by M/s. BHEL. They cannot be faulted that M/s. BHEL took a u-turn on such eligibility and informed them by e-mail at such a period that they were not eligible for such exemption.

7. In any case, based on that e-mail, subsequent to the audit visit and the letter from the jurisdictional Superintendent, the appellants paid up the amounts with interest and informed the fact of the same to the authorities on 30.08.2010. We therefore find that this is definitely a case where the provisions of Section 11A(2B) ibid may very well have been extended to the appellant.

8. Be that as it may, the Show Cause Notice has been issued almost four years from the date of the audit objection and the

payment made by the appellants. Notwithstanding the contentions of the Ld. AR, we find that the conclusion reached by the adjudicating authority that the appellants had indulged in mis-statement of facts, etc., is contrary to the evidence on record. In fact, this is a base where the benefit of Section 11A(2B) should have been extended to the appellants. The appellants are not contesting the duty demand and are only praying for setting aside the penalty.

9. In view of the foregoing discussions, when the ingredients of Section 11AC ibid are not present at all in this case, the penalty imposed under that Section cannot be sustained and is required to be set aside, which we hereby do.Appeal No. E/40316/2015 is therefore partly allowed to the extent of setting aside the penalty imposed under Section 11AC ibid.

11. Coming to Appeal No. E/465/2012, Ld. Advocate for the appellants has submitted that they are not pressing the appeal. Hence, the same is dismissed as not pressed.

12. To sum up :

(i) Appeal No. E/465/2012 is dismissed.

(ii) Appeal No. E/40316/2015 is partly allowed on above terms.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

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

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