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

Appeal No. E/245/2008

[Arising out of Order-in-Original No.03/2008 (C.Ex.) dt.27.2.2008 passed by the Commissioner of Customs & Central Excise, Salem]

P & C Constructions P. Ltd. Appellant

Versus

Commissioner of Customs & Central Excise, Salem Respondent

Appearance:

Shri S. Muthuvenkatraman, Advocate
For the Appellant

Shri A. Cletus, ADC (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 : 11.08.2017

FINAL ORDER No. 41721/2017

Per Bench

The issue involved is whether appellants are eligible for exemption under Notification No.6/2002-CE dt. 1.3.2002 (Sl.No.196A) and its successor Notification No.6/2006-CE dt. 1.3.2006 (Sl.No.7) from payment of duty on machinery and their

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components/parts cleared for setting up water treatment plant and pipes.

2. Appellants are engaged in the manufacture and clearances of PSC Pipes and are registered with the Central Excise department. They are also availing credit on the Basic Excise Duty of the said pipes. The appellant had cleared PSC pipes without payment of duty availing exemption under Sl.No.196A of the Notification No.6/2002 during the period from January 2003 to February 2006 and Sl.No.7 of the Notification No.6/2006 for the period from March 2006 to May 2006. They had cleared PSC pipes to various water supply improvement scheme of TWAD Board, Govt. of Tamil Nadu without payment of duty claiming the exemption from payment of duty on machinery and their component/parts cleared for setting up of water treatment plants and pipes needed for delivery of water from its source to the plant and from there to the storage facility. One of the conditions in the notification is that manufacturer has to file a certificate issued by the District Collector with the jurisdictional Asst. Commissioner before removal of such goods.

3. The Executive Engineer, TWAD Board, Special Division, Cuddalore vide letter dt. 25.4.2005 had requested to inform the amount of exemption of excise duty availed by the appellant for the goods cleared by them and also requested the department not to grant any further clearance of such goods until further information from his end. Consequent to the receipt of this letter, an enquiry was

conducted regarding the existence or otherwise of water treatment plant in the water supply projects for which pipes were cleared without payment of duty so as to ascertain the eligibility of exemption to the appellant. On such enquiry, it was seen that water supply schemes namely, WSIS Jayakondam Project, CWSS Uthiramerur Project, WSIS Thindivanam projects were not equipped with water treatment plant. Department was of the view that the appellant was not eligible to avail the exemption for the said projects and also not eligible for the exemption in respect of pipes supplied to Town Hall to Saramedu Project and CWSS CLPRA Coimbatore project since the pipes were supplied for the extension of the pipelines and for replacement of the existing pipelines. So also in respect of 700 MM/16 KSC pipes supplied to Town Hall to Saramedu project was not in order since the District Collector had permitted clearances of only 350MM/4 KSC pipes only. Appellant vide their letter dt. 2.4.2007 explained the details and also informed that they had remitted duty in respect of pipes and that they did not want any show cause notices and also claimed that they are eligible to avail exemption and are not liable to pay duty on the pipes supplied to these projects. SCN dt. 7.1.2008 was issued to appellant and after due process of law, original authority confirmed the demand of Rs.71,01,445/- along with interest and imposed equal penalty besides appropriate amount already paid by the appellant. Hence this appeal.

4. On behalf of the appellant, Ld. Counsel Shri Muthuvenkat-Raman made the following submissions that :

(i) The appellants are eligible for the exemption as per the notifications since they had cleared the goods only on the basis of certificate issued by the District Collector with the signature of the respective TWAD Board authority.

(ii) The condition in the notification for availing the exemption is only to produce a certificate issued by the Collector / District Magistrate / Deputy Commissioner of the District in which the plant is located to the effect that such goods are cleared for the intended use specified in the notification.

(iii) The department sought to deny the exemption alleging that exemption is available only for the pipes cleared for use from the source to the water treatment plant and from the plant to the storage area. It is alleged that there is no water treatment plant in some of the projects. The authority as mandated in the notification namely, the District Collector has issued certificate stating that the goods are cleared in respect of the project and also that the certificate is issued for the purpose availing exemption as per the said notification; that this is sufficient compliance of the condition stipulated in the notification and also that department cannot question the certificate issued by a public authority.

(iv) The appellants were under bonafide belief that they were eligible for the exemption as per notification and they have complied with payment of substantial part of the duty even before issuance of the show cause notice and therefore the invocation of extended period and the imposition of penalty is not tenable in law as there was no intention to evade payment of duty.

(v) Ld. counsel also relied upon the judgements rendered in the case of *Finolex Industries* Ltd. *Vs CCE Pune* - 2017-TIOL-335-CESTAT-MUM.; *Laxmi Pipes and Fittings Pvt. Ltd. Vs CCE & CC Indore* - 2017-TIOL-2160-CESTAT-DEL; *Supreme Industries Ltd. Vs CCE Nasik* - 2017-TIOL-650-CESTAT-MUM and the final order passed by this Tribunal in the case of *The Indian Hume Pipe Co.Ltd. Vs CCE & ST Trichy* vide Final Order No.42123/2016 dt. 1.112016.

5. Ld. A.R Shri A. Cletus, on behalf of Revenue, countered these arguments and reiterated the findings in the impugned order. He submitted that a detailed enquiry was conducted wherein it was found that some of the projects did not have water treatment plant. The notification specifically stated that exemption is eligible for the goods / pipes used from the source to water treatment plant and from there to the storage. Notification has two parts. Firstly descriptive part and secondly the condition part. Appellants have not fulfilled both these conditions since descriptive part talks about pipes that can be used from source to the water treatment plant and when there is no plant at all, descriptive part of the notification has not been complied with. He also added that District Collector who issued the certificate has misunderstood the notification by giving certificate for

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the pipes used from source to storage. Since the appellants have not complied with condition the certificate issued cannot be accepted or relied upon for giving the benefit of the notification.

6. Heard both sides and perused the records.

7. The main ground raised by Revenue is that certificate issued by the District Collector cannot be accepted as the basis for compliance of the condition in the notification. We are able to agree with this argument of the Revenue. Ld. Counsel for appellant has submitted that certificate has been signed by the District Collector as well as Executive Engineer, TWAD Board but the Revenue has acted upon a letter issued by the Executive Engineer, TWAD Special Division, Cuddalore written to the department seeking information about the exemption of the duty eligible to the appellant as well as for further information regarding clearances of goods. When the certificate has been issued by the District Collector as well as TWAD Board authorities, we have to say that department cannot deny the exemption by merely relied upon a letter issued by Executive Engineer, Special Division, Cuddalore. In the case of *Jain Irrigation Systems Ltd. Vs CCE & Customs, Nashik* - 2017-TIOL- 918-CESTAT-MUM, the Tribunal in similar set of circumstances had observed that it is not open for the Central Excise authority to overrule the certificate issued by a competent a public authority. The said principle has been enunciated by the Hon'ble Supreme Court in the case of *State of Haryana Vs Dalmia Dadri Cement Ltd.* – 2002-

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TIOL-262-SC-CT =2004 (178) ELT 13 (SC). The relevant portion of the Supreme Court judgment is reproduced as under :

> "**10.** We are unable to accept the submission of Mr. Bana that, in order to get the exemption it must be shown that the goods in question, namely, the cement supplied by the assessee in this case was actually used in the generation or distribution of electrical energy. It must be noted that the important words used in the relevant provisions are goods *for use* by it in the generation or distribution of such energy (emphasis supplied by us). On a plain reading of the relevant clause it is clear that the expression "for use" must mean "intended for use". If the intention of the legislature was to limit the exemption only to such goods sold as were actually used by the undertaking in the generation and distribution of electrical energy, the phraseology used in the exemption clause would have been different as, for example, "goods actually" used or "goods used".

So also this Tribunal in the case of *The Indian Hume Pipe Co. Ltd.* (supra) has considered the identical facts and held that contention of Revenue is unsustainable. In the judgment relied upon by ld. Counsel for appellant in identical circumstances, the issue has been held in favour of the appellant holding that they are eligible for the exemption. Following the same, from the discussions made above, we find that the demand is not sustainable and impugned order is set aside and appeal allowed with relief if any as per law.

(Operative part of the order pronounced in court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

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चेन्नै / CHENNAI