CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.C/126/2007

[Arising out of Order-in-Appeal No.67/2006 dated 20.12.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

Clarion Power Corporation Ltd. Appellant

Versus

Commissioner of Customs, Tuticorin Respondent

Appearance:

Shri Joseph Prabhakar, Advocate
For the Appellant

Shri K. Veerabhadra Reddy, JC (AR)
For the Respondent

CORAM :

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of hearing / decision :06.02.2017

FINAL ORDER No. 40236/2017

PerD.N. Panda

The submission of the appellant that it was granted Project Import Registration in Hyderabad for generation of power and basing on that registration, TRA was issued for importing part of the generator plant through different ports availing duty concession. One such part viz. Turbine K-12-6-4T was imported through **Tuticorin port** through Bill of Entry No.5363 dt. 21.08.2003 declaring value thereof Rs.3,98,82,995. Similarly, one [illegible] generator valued at Rs.1,42,02,891/- was imported from **Mumbai Customs Port** under Bill of Entry No.424 dt. 15.09.2003. Appellant availed Project Import concession in respect of customs duty under **Notification No.21/2002-Cus. dt. 1.3.2002** in respect of these two imports. Goods were cleared under provisional assessment. While clearance was made in terms of Notification No.21/2002-Cus.dt. 1.3.2002, appellant also availed exemption from Additional Duty of Customs in terms of Notification No.6/2002-CE dt.1.3.2002 which was 16%.

2. Later, when the provisional assessments were sought to be finalized, in the course of finalization, Revenue did not allow exemption of additional duty of customs claimed under Notification No.6/2002-CE dt.1.3.2002 holding that the device as a whole was not imported. Added to this, Revenue's objection was that since Notification No.21/2002-Cus. dt. 1.3.2002 was issued for power generation projects under Project Import Registration, simultaneous benefit shall not be allowed under Notification No.6/2002-CEdt.1.3.2002.

3. Ld. counsel on behalf of the appellant submits that ground of denial of above benefit by Revenue is illogical for the reason that there is no debarment in law to grant benefit of respective notifications applicable to the import. When Revenue knew that appellant was going to set up a power generation plant under the Project Import Registration, it should not have discriminated it as a different device of the said plant to deny the exemption under Notification No.**6/02-CE. dt. 1.3.2002**. Secondly, there is no bar in law to grant benefit of exemption from the Additional Duty of Customs when the excise duty thereon is exempted in terms of Notification No.6/02-CE. dt. 1.3.2002. Those notifications independently operate in their field.

4. Revenue, submits that simultaneous exemption claimed by appellant both under Customs Notification No.21/2002 and Central Excise Notification No.6/2002 both dt. 1.3.2002 is not permissible. According to Revenue, when project registration was granted to the appellant, it was known to it that it shall be covered by the specific notification pertaining to grant of such registration only and no benefit of any other notification is permissible. Notification No.**21/2002-Cus.** does not provide any scope to grant by its express terms any benefit under other notification.

5. Heard both sides and perused the record.

6. The precise dispute in this appeal is whether the Additional Duty of Customs is exempt on Turbine imported through Tuticorin Port in terms of Notification No.6/2002-CE dt. 1.3.2002 while Customs duty exemption under Notification No.21/2002-Cus. dt. 1.3.2002 was granted to the appellant under project import registration.

7. In order to examine the legislative intent in respect of grant of exemption under both the notifications, those two notifications were read. The Notification No.**21/2002-Cus.dt. 1.3.2002** in so far that is relevant for the present case is reproduced below :

Effective rates of basic and additional duty for specified goods falling under chapters 1 to 99

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 17/2001-Customs, dated the 1st March, 2001 [G.S.R. 116(E), dated the 1st March, 2001], the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading of the First Schedule to the Customs

Tariff Act, 1975 (51 of 1975) as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) **from so much of the duty of customs** leviable thereon under the said First Schedule as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table;

(b) **from so much of the additional duty** leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column (5) of the said Table,

subject to any of the conditions, specified in the Annexure to this notification, the condition No. of which is mentioned in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to -

(a) the goods specified against serial Nos. 239, 240, 241 and 242 of the said Table on or after the 1st day of April, 2003;

(b) the goods specified against serial Nos. 250, 251 , 252 and 415 of the said Table on or after the 1st day of March, 2005.

Explanation. - For the purposes of this notification, the rate specified in column (4) or column (5) is *ad valorem* rate, unless otherwise specified.

Table

S. No.	Chapter or Heading No. or sub-heading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
...	...	....	...	...	...
399	98.01	Goods required for -			
		.....	...	....	....
		(iv) power generation projects including gas turbine power projects (excluding captive power plants set up by projects engaged in activities other than in power generation)	5%	16%	-
.....	....	...	...	....	..

8. So far as exemption from Additional Duty of Customs granted in terms of Notification No.6/2002-CE is concerned, the relevant part of the notification applicable to the disposal of present appeal is extracted below :

Effective Rates of duty for specified goods of Chapters 1 to 96

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts excisable goods of the description specified in column (3) of the Table below or specified in column (3) of the said Table read with the concerned List appended hereto, as the case may be, and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, -

(a) from so much of the duty of excise specified thereon under the First Schedule (hereinafter referred to as the First Schedule) to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of the Special duty of excise leviable thereon under the Second Schedule (hereinafter referred to as the Second Schedule) to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table,

subject to the relevant conditions specified in the Annexure to this notification, and referred to in the corresponding entry in column (6) of the said Table :

Provided that nothing contained in this notification shall apply to goods falling under sub-heading No. 3605.10 against S. Nos. 65, 66, 67 and 68 of the said Table on or after the 1st day of April, 2002 :

Provided further that nothing contained in this notification shall apply to the goods specified against S. Nos. 193, 195, 199 and 200 of the said Table on or after the 1st day of March, 2005.

Explanation. - For the purposes of this notification, the rates specified in columns (4) and (5) of the said Table are ad valorem rates, unless otherwise specified :-

Table

S. No.	Chapter or heading No. or sub-heading No.	Description of goods	Rate under the First Sch-edule	Rate under the Second Sch-ed-ule	Co-ndi-tion No.
(1)	(2)	(3)	(4)	(5)	(6)
...	....	....	....	....	....
237	Any Chapter	Non-conventional energy devices/ systems specified in List 9	Nil	-	-
.....	.....	...	...	.....	.....

LIST 9

.....(16) Agricultural, forestry, agro-industrial, industrial, municipal and urban waste conversion device producing energy.....

9. Notification No.21/2002-Cus. dt. 1.3.2002 having not disputed, that is not under our consideration in this order and this order is confined only to the dispute on the issue arose in terms of Notification No.**6/2002-CE dt. 1.3.2002**. When Item No.16 of the List 9 under Sl.No.237 of the Table appended to the Notification No.6/2002 is read that indicates that conversion devices producing energy using agricultural, forestry, agro-industrial, industrial, municipal and urban waste is exempt from levy of excise duty. Section 3 of the Customs Tariff Act, 1975 provides level playing field to realize additional duty of customs equal to the duty of excise when similar goods are imported so as to bring both goods in par bearing the duty burden to compete in domestic market. This intention of the legislature governs the grant of exemption. Apart from that, the intention of the Project Import Registration is that a total device capable of producing energy is intended to be exempted from excise

duty under Excise Notification No.6/2002-CE. Turbine not being a total device but being only a part of device producing energy, shall not come within the purview of item No.**16** of **List 9** appearing under **Sl.No.237** of the Notification No.**6/2002-CE**.

11. We may state that exemption is granted at public cost subject to certain conditions, stipulation as well as limitations which cannot be very casually to be applied to interpret the intention of an exemption notification. That requires very strict interpretation so that exchequer does not suffer by virtue of exemption granted liberally. Law is well settled that if by a *prima facie* consideration, exemption is grantable, then liberal approach is permissible. But that is not the case here. *Prima facie*, Turbine does not produce energy without being integrally connected to other energy producing devices. Therefore any grant of exemption benefit of additional duty of customs to turbine shall defeat purpose of the law and shall cause loss to the public revenue. Accordingly, appellant not being entitled to the grant of exemption under Notification No.6/2002-CE, appeal is dismissed.

12. While passing this order, it was brought to our notice Tribunal's decision in the case of *Triveni Engineering & Industries Ltd. Vs CCE Bangalore* – 2004 (172) ELT 353 (Tri.-Bang.) holding that Turbine is not eligible to exemption, remained uninterfered by Apex Court as reported in 2015 (321) ELT A280 (SC).

13. Revenue insisted that Tribunal should also settle that there shall not be claim under different notifications. We state that it is considered to be academic exercise at this stage.

(Dictated and pronounced in open court)

15/02/2017

(Madhu Mohan Damodhar)
Technical Member

13/2/2017

(D.N. Panda)
Judicial Member

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Customs, Excise & Service Tax Appellate Tribunal