

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Customs Appeal No. 41985 of 2013

(Arising out of Order-in-Appeal C.Cus. No. 910/2013 dated 28.06.2013 passed by the Commissioner of Customs (Appeals), No. 60, Rajaji Salai, Custom House, Chennai – 600 001)

M/s. Graphite India Limited

: Appellant

Powmex Steel Division,
At-Turla, P.O. Jagua, P.S. Titagarh,
Dist.: Bolangir, Orissa – 767 066

VERSUS

Commissioner of Customs

: Respondent

No. 60, Rajaji Salai, Custom House,
Chennai – 600 001

APPEARANCE:

Shri Satyaprem Majumder, Advocate for the Appellant

Shri M. Ambe, Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40500 / 2023

DATE OF HEARING: 07.06.2023

DATE OF DECISION: 28.06.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts, as could be gathered from the orders of lower authorities placed on record as well as after hearing both sides are that the appellant had registered their Project Contract on 21.08.1991 for import of capital goods and when documents were submitted for finalization, the Revenue appears to have noticed two items missing from the list that was originally registered with Project Import, which apparently were not imported by the appellant.

1.2 It appears that the Revenue sought clarification from the importer as to the discrepancy, but the importer appears to have replied that they had cleared Gas Automation Plant, Capsule Manufacturing Facility, Horizontal Precision Forging Machine under Project Contract and Ultrasonic tester and Direct Reading Spectrometer on merits and had deferred import of Portable X-Ray Analyzer and Mass Spectrometer. This, according to the Revenue, was clearly contrary to the Instructions of the Board dated 08.08.1987 and the Standing Order No. 35/87-MCH wherein it was clarified that the goods once registered with project import, could not be de-registered, that is to say, concurrent benefit of any other exemption notification could not be extended by classifying them on merits.

1.3 Accordingly, the two items namely, Ultrasonic Tester valued at Rs.3,71,961/- and Direct Reading Spectrometer valued at Rs.13,40,230/- were assessed at project rate instead of normal rate and a Demand Notice dated 28.05.1995 was issued demanding differential duty of Rs.8,22,492/-.

1.4 It appears from the record that the importer did not remit the duty demanded, but however, when the revenue recovery proceedings were initiated, it appears that the importer filed an appeal before the first appellate authority citing that the date of receipt of the adjudication order was on 28.07.2007. It also appears from the record that the appellant had indicated that M/s. Powmex Steels Ltd. had merged with M/s. GKW Ltd. in 1996 and subsequently, transferred to M/s. Graphite India Ltd. i.e., the present appellant before this forum. However, it also appears that the first appellate authority, not accepting the date of receipt, having dismissed their appeal as barred by limitation, the appellant had filed an appeal before this forum.

1.5 This Bench vide Final Order No. 686/2010 dated 18.06.2010 having observed that there was no delay from the date of receipt, remanded the matter back to the file of the adjudicating authority for *de novo* adjudication. The said order of this Bench having not been challenged before a higher forum, the same has attained finality.

2.1 It appears from the *de novo* adjudication order that during the course of personal hearing, the appellant, through its advocate, raised contentions as to the legality of Show Cause Notice as to the same being hit by limitation and also for the reason that the same was issued in the name of M/s. Powmex Steels Ltd. which was not existing. Further, it was also contended that the adjudicating authority had passed the Order-in-Original on 19.12.1997 and the Show Cause Notice dated 27.07.2004 issued against M/s. Powmex Steels Ltd. was at least after ten long years which was also unsustainable in the eye of law.

2.2 The adjudicating authority, however, after hearing the appellant and considering the reply filed during adjudication, held that the fact of merger of M/s. Powmex Steels Ltd. with M/s. GKW Ltd. indicated that all the assets and liabilities were transferred to M/s. GKW Ltd. and further, to M/s. Graphite India Ltd. i.e., the appellant, which took over M/s. GKW Ltd. including its assets, benefits and liabilities. On merits, the adjudicating authority confirmed the demand of differential duty, as proposed, since there was a clear failure on the part of the importer to meet the Project Import regulations, for which reason the full exemption could not be given.

2.3 Aggrieved by the above order, it appears that the appellant preferred an appeal before the first appellate authority and the first appellate authority, after considering the contentions both on technical grounds as well as on merits, having rejected the appeal vide impugned Order-in-Appeal C.Cus. No. 910/2013 dated 28.06.2013, the present appeal has been filed before this forum.

3. Heard Shri Satyaprem Majumder, learned Advocate appearing for the appellant and Shri M. Ambe, learned Deputy Commissioner representing the Revenue.

4. The submissions of the Ld. Advocate could be summarized as under: -

- The Show Cause Notice dated 27.07.2004 against M/s. Pomex was not maintainable.
- The above Show Cause Notice is clearly hit by the period of limitation.
- The above Show Cause Notice is also invalid since the same was issued after the Order dated 19.12.1994 was passed.
- The Order dated 19.12.1994 was also issued after the finalization of Project Contract.
- The successor company was unaware of both the order as well as the Show Cause Notice, which were sent to the erstwhile administrative office at Hyderabad of the non-existent M/s. Powmex Steels Ltd.
- The above Order-in-Original also returned undelivered.

5. *Per contra*, the Ld. Deputy Commissioner has reiterated the findings of the lower authorities.

6. We have considered the rival contentions and we have also perused the orders of the lower authorities placed on record.

7. After hearing both sides, we find that the only issue to be decided by us is: whether the impugned Order-in-Appeal is sustainable in the eye of law?

8.1 We have indicated in the earlier paragraphs that in the first round of litigation before this forum, an appeal was filed by the importer and this Bench, after hearing both sides and after waiving the pre-deposit, vide Final Order No. 686/2010 dated 18.06.2010 chose to set aside the impugned order by observing that the appellant had no knowledge of the adjudication against M/s. Powmex Steels Ltd. at any date prior to 28.07.2007. Further, the above order of this Bench has been accepted by both the parties and thus, has attained finality.

8.2 By the time the above order of this Bench was passed, the second Show Cause Notice dated 27.07.2004 was already on board and we do not see any whisper about the same anywhere in the order of this Bench and in particular, any issue being made as to the Show Cause Notice being issued much after the period of limitation. Hence, we can only say that the contention of the appellant cannot be accepted as, apparently, it has missed the bus.

8.3 Further, when the order of this Bench which was passed against the Order-in-Appeal wherein the Order-in-Original was challenged, which was passed on the second Show Cause Notice, has become final now, we have to only hold that by virtue of the doctrine of merger, the orders of the lower authorities have merged with the order of this Bench and it is only consequent to the directions of this Bench that the *de novo* Order-in-Original dated 26.07.2012 was passed.

9. We will now consider the issue on merits.

10. Facts are not in dispute; the appellant registered its Project Contract for import of capital goods, but it has not disputed the missing of two items which therefore resulted in denying the concurrent benefit of exemption. For this, differential duty was demanded, which is as per law. Therefore, we are convinced that the assessee has not made out any case even on merits for our intervention.

11. In view of the above, the appeal is dismissed.

(Order pronounced in the open court on **28.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd