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

COURT HALL No.III

EXCISE APPEAL No.40703 - 40705 OF 2014

(Arising out of Order-in-Appeal Nos. 10, 11 & 12 / 2014 dated 8.1.2014 passed by Commissioner of Central Excise (Appeals), Large Tax Payer Unit, 1775, J N Road, Anna Nagar (W) Extn. Chennai 600 101).

M/s. Alstom T & D India Ltd., ... **Appellant**
(formerly known as Areva T & D India Ltd.
19/1, GST Road, Pallavaram
Chennai 600 043.

Versus

The Commissioner of GST & Central Excise, **...Respondent**
Chennai Outer Commissionerate
Newry Towers, No.2054, I Block, II Avenue
12th Main Road, Anna Nagar, Chennai 600 040

APPEARANCE :

Mr. Joseph Prabakar, Advocate
For the Appellant

Ms. O. M. Reena, Additional Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

Date of Hearing : 26.10.2023
Date of Decision: 26.10.2023

FINAL ORDER Nos.40969-40971/2023

ORDER : Per Ms. SULEKHA BEEVI C.S.

1. Brief facts are that the appellants received orders from M/s. Megha Engineering and Infrastructure Ltd., Hyderabad for supply of goods for use in project of Moulana Abdul Kalam, Hyderabad, Sujala Shranti (drinking water supply) and Sippu Lift Irrigation Project, Gujarat. The appellant informed the department that they intended to clear the goods in the nature of 24 numbers of Capacitor Voltage Transformers, 220 KV Control and Relay Panel and 220 KV SF 6 Circuit Breaker and 66 KV Circuit Breakers by availing the exemption as per Sl. No.7 (1) of Notification No. 6/2006 dated 01.03.2006 (presently Serial No. 233 of Notification No.12/2012 dated 17.03.2012) read with condition No. 4 of Sl.No.7 of Notification No.6/2006 dated 01.03.2006 (presently condition No.23 of Serial No.233 of Notification No.12/2012 dated 17.03.2012). As per the above Notification, the exemption was available to all items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their component parts required for setting up of water treatment plants. The condition no.23 imposed by the Notification is that an assessee has to produce a certificate issued by the District Collector stating that the goods cleared for the intended use specified in column (3) of the Table of the Notification.

2. 'The condition no. 23 reads as under:

"if, a certificate issued by the Collector or District Magistrate or Deputy Commissioner of the District in which the plant is located, is produced to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction, to the effect that such goods are cleared for the intended use specified in column (3) of the Table."

3. The department was of the view that certificates issued by the District Collector mentioned that the goods were intended for use in the pumping station for transmission of water to the water treatment plant and not for use at the plant itself. Accordingly, the Department advised the appellant that they were not eligible for exemption of the Notification. The appellants cleared the goods on payment of duty under protest. Subsequently, they filed three refund claims for the duty paid in respect of the goods cleared as per the Notification.

4. Three separate Show Cause Notices were issued proposing to reject the refund claims alleging that the duty paid by them under protest is correct and that the appellants are not eligible for refund. Being aggrieved by such order, the appellants filed an appeal before the Commissioner (Appeals), who vide orders impugned herein upheld the order of rejection of refund claims. Hence the appellant is now before the Tribunal.

5. The Ld. Counsel Shri Joseph Prabhakar appeared and argued for the appellant. The relevant notification was adverted to by the Ld. Counsel which reads as under:

S.No.	CETH	Description of excisable goods	Rate	Condition No.
233	84 or any other chapter	The following goods, namely:- (1) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components / parts required for setting up of water treatment plants; 2. Pipes and pipe fittings needed for delivery of water from its source to the plant (including the clear treated water reservoir, if any, thereof), and from there to the first storage point; 3. Pipes and pipe fittings of outer diameter exceeding 10cm when such pipes are integral part of the water supply projects Explanation: For the purposes of this exemption, water treatment plants includes a plant for desalination, demineralisation or purification of water or for carrying out any similar process or processes intended to make the water fit for human or animal consumption, but does not include a plant supplying water for industrial purposes.	Nil	23

6. It is submitted by the Ld. Counsel that as per condition No.23 of the Notification as above, to claim the exemption, the tax payer has to produce a Certificate issued by the Collector / District Magistrate / Deputy Commissioner of the District in which the plant is located. The appellant has produced the said certificate which states that the goods cleared by the appellant are used in the Pumping station for transmission of water from source to the water treatment plant. The department has taken the view that the goods cleared are not used at the water treatment plant itself and therefore the benefit of notification is not available to the goods. It is argued by Ld. Counsel that when the concerned authority has issued the certificate stating that the goods are used for the intended project, the department cannot disregard the said certificate and allege that the goods are not required / intended for the water treatment plant. The counsel submitted that in para 1 of the said Notification the words used are "for setting up of water treatment plant". The pumping station is used for pumping the water from the source to the water treatment plant and is an integral part for setting up of water treatment plants. Without carrying out the activity of pumping the water from the source to the water treatment plant the activity of treatment of water at the plant so as to make it potable cannot take place.

7. The Ld. Counsel adverted to the decisions in the case of *P & C constructions Pvt. Ltd. Vs. CC & CE, Salem 2017 (8) TMI 1045 CESTAT, Chennai* to argue that when the certificate has been

issued by the District Collector or the Board authorities certifying that the goods are intended for the purpose of the water treatment plant, the department cannot deny the exemption stating that the goods are not intended for setting up of the water treatment plants.

8. The decision in the case of *M/s The Indian Hume Pipe company Ltd. Versus CCE & ST, Madurai 2017 (11) TMI 1322 - CESTAT, Chennai* was relied by the Ld. Counsel to argue that when the pipes supplied were intended to carry the water from the source to the water treatment plant, the benefit of exemption under Notification No.6/2002- CE, dated 1/3/2002 was held to be eligible.

9. In the case of *M/s. Man Industries (India) Ltd. and Others Versus Commissioner, Central Excise and Service Tax (LTU) Mumbai 2019 (5) TMI 367 CESTAT, Mumbai,* similar issue was considered where the question was denial of benefit of the said Notification on the pipes cleared by assessee and used beyond the first storage facility of the water treatment plant. The Tribunal held the issue in favour of assessee by relying on the decision in the case of *Commissioner Versus Electrosteel Casting Limited* [2008 (10) TMI 424 – *CESTAT, Kolkatta*. This decision has been confirmed by the Apex Court in [2009 (8) TMI 1123 - SC. The Ld. Counsel prayed that the appeals may be allowed.

10. The Ld. AR Ms. O. M. Reena appeared and argued for the department. She supported the findings in the impugned order. The language used in the Notification was adverted to by the Ld. AR to argue that the explanation given in the Notification says that the goods cleared should be intended for use in the water treatment plant. The present goods are used for the pumping station to pump the water from the source to the water treatment plant. Therefore the benefit of Notification has been correctly denied. The Ld. AR relied the decision in the case of *Precise Engineer Versus CCE* and S.T. Vadodara 2019 (370) E.L.T. 356 (Tri. – Ahmedabad). It is prayed that the appeal may be dismissed.

11. Heard both sides.

12. The issue is whether the appellant is eligible for the benefit of exemption of the Notification 6/2006 dated 1/3/2006. The said notification has already been reproduced in para 5 above. The condition no. 23 for availing the exemption is that the assessee has to produce a certificate issued by the District Collector, certifying that the goods are intended for use as specified in coloumn 3 of the table.

13. In column 3 of the table as per para (1), all items of machinery, including instruments apparatus and appliances, auxillary equipment and other components / parts required <u>for</u>

setting up of water treatment plant is eligible for exemption. The department has denied the exemption alleging that the goods are used for the sub station / pumping station as part of the water supply project and not specifically at the water treatment plant. The discussion by the original authority in order dated 16/11/2012 at para 12 reads as under:

> *"12. In the present case, as per the certificates issued by the District Collector, the goods supplied by the taxpayer are intended for installation in the pumping stations which are located at the source away from the water treatment plant for pumping of water to the Water Treatment Plant. The goods as such are not for use at the Plant itself. The certificate issued by the District authority only certifies the use of the goods for electro-mechanical and hydro-mechanical sub-station equipment for kondopakka and Mallaram pumping station, as part of the water supply project and not specifically at the water treatment plant. The intention of the notification as explained in para supra is that the goods cleared under the said notification should be used in setting up water treatment plant and the same are not for use at the place of source) This is evident from the entry 2 which reads as "pipes needed for delivery of water from its source to the plant and from there to the storage facility and in other words the notification is very that only pipes needed for delivery of water from the its source to the plant and from there to the storage facility is eligible and no other goods used at the place of source of water for pumping of water is eligible for the exemption. In view of the above, since the goods supplied have not been used for setting up of water treatment plant, but only for setting up of pumping station for a water supply project, the goods are not eligible for exemption under sl.no 233 of notification no.12/2012 dt 17.3.2012. Hence, the duty has been correctly discharged on the goods and the taxpayer are not entitled to any refund claim.*
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> *13. It has been argued by the taxpayer that water treatment plant has a wide meaning and would include all plant and machinery. In this regard, the Explanation to the sl.no, 233 also gives the meaning of the water treatment plant to include a plant for desalination, demineralisation or purification of water or for carrying out any similar processes intended to make water fit for human or animal consumption. Thus, the said explanation does not cover the entire water supply project, but only the plant used for specific purposes. In the circumstances, the pumping station at the source cannot be considered as part of water treatment plant I further find that with qualification specifically allowed for pipes and fittings used from source to Water treatment plant and from plant to*

> *storage point, other items used for similar purpose cannot be allowed the exemption unless specified therein.*
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> *14. It has been further argued by the taxpayer that once a Government authority issues the required certificate as per the condition attached, the same has to be accepted by the Department. It is to be pointed out here that the certificate issued by the Government authority is not disputed here The certificate as per the condition no 23 to the notification has to state that the goods are for intended purpose as specified in col 3 of the table. The state government authority have clearly stated in the certificate that the goods are intended for the specified purpose, i.e., for use at pumping station and for the water supply project. Nowhere in the certificate, it has been mentioned that the goods are for use in water treatment plant. Hence, by mere issue of certificate, the taxpayer would not be eligible for exemption notification, the goods are clearly covered within the specific description mentioned in the notification*

14. It is the case of the department, that as per the Explanation given in the notification, the benefit cannot be extended to the entire water supply project but only to the water treatment plant. We are not able to endorse this view of the department. The explanation only gives the meaning of water treatment plant and excludes the supply of water for industrial purposes. The explanation does not anywhere say that goods used for the project has to be excluded. In fact para 1 of the Notification exemption applies to all goods required <u>for setting up</u> of water treatment plant. For setting up of water treatment plant, it is necessary to have the water carried through pipes from the source to the water treatment plant. Needless to say that such activity of carrying the water from the source to the treatment plant can take place only if there is a pumping station. The present goods cleared by the appellants are used in the pumping station. In para 14, the Original authority has discussed that the certificate issued by the Government Authority only states that the goods are used for the

pumping station and for the water supply project. Thus benefit of exemption has been denied by stating that the goods are not used in the water treatment plant. In our view, the pumping station as well as the pipes that carry the water from the source to the water treatment plant are integral part of setting up of water treatment plant.

15. It is also to be stated that when the Government authority issues the certificate stating that these goods are intended for the purpose of the water treatment plant/ project, the department cannot deny stating that it is not used for the intended purpose as per the notification.

16. Similar issue was considered by the Tribunal in the case of *M/s. Man Industries (India) Ltd*. (supra). The issue under consideration was whether the benefit of Notification is available to the pipes which were used beyond the first storage facility. The Tribunal held that the assessee would be eligible for the benefit of notification. The discussions are as under:

> 6. We have carefully considered the submissions advanced by both sides. The short issue involved in the present appeals for determination is whether the Appellants are eligible to the benefit of Notification No. 6/2002-CE, dt 01.03 2002 and Notification No 8/2004-CE, for the pipes manufactured and cleared to M/s Subhash Projects & Marketing Ltd and M/s Indian Humes Pipe Corporation Ltd during the relevant period for its use beyond the first storage facility. This Tribunal in Mis Electro Steel Castings Ltd's case, observed as follows
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> “8 After hearing both sides and perusal of the case records, we find that in the impugned Notification, pipes needed for delivery of water from its source to the plant and from there to the storage facilities have been exempted subject to the requirement of obtaining a certificate from the Collector, District Magistrate, Deputy Commissioner of the District in which the plant is located. We And that the

required certificates have been obtained by the Respondents clearly showing that the impugned pipes were needed for delivery of water from the plant to the storage facilities. Secondly, we find that the Notification merely talks about the storage facilities and there is no restriction that the water should be delivered only to the first storage point, as has been provided in the amended Notification with effect from 1-3-07, it is obvious that the un-amended Notification would have to be interpreted to cover the impugned pipes which were needed to deliver water not only to the first storage point but also to the second and subsequent storage point, such as elevated storage reservoirs where the water was further treated for chlorination. If it was the intention of the Government to restrict the exemption for pipes upto first storage point, the Notification should have been accordingly worded from the beginning In the absence such a restriction, the Respondents Hive executed the Work Order in respect of Water Treatment plants which are of public utilities and the concerned District Collectors have also given them the necessary certificates in respect of the exemption Notification as it was in its unamended form. Even after amendment, we find that the pipes of higher dimension have been allowed exemption in addition to the pipes required upto the first storage point In other words, the amended Notification also allows exemption to pipes which used beyond the first storage point, but in respect of only higher dimension. As regards the ground of the Department that the communication issued by the Jurisdictional Superintendent should not be treated as an appellable order, we are unable to agree with the same. By issuing the said letters, the Superintendent sought to deny exemption to the Respondents by putting a restriction on the clearance of the pipes for the public utilities concerned In fact, the Superintendent violated the instructions of the Department in not issuing a show cause notice and giving an opportunity hearing to the respondents before passing a non-speaking order. In such a situation, where the Superintendent put a restriction on the clearance, the Respondents had no option but to go to the lower Appellate Authority for redressal of their grievance. Moreover, under Section 35 of the Central Excise Act, 1944, any person aggrieved by any decision or Order passed under the Act by a Central Excise Officer lower in rank than the Commissioner can appeal to the Commoner (Appeals). Since in the instant case, the Superintendent is a Central Excise Officer lower in rank than the Commissioner and he had communicated the decision/order not to effect clearance availing exemption, the Respondents in this case were, inter alia, aggrieved by his decision/order so communicated and in our view, the lower Appellate Authority was right in entertaining the Appeal against such communication

9. As regards the third ground taken by the Department that exemption Notification should have been strictly construed on the basis of the language used therein, and not on the basis of intendment by supplying words, wo are of the view that it is the Department which has actually supplied the words first before the expression, "storage facilities" trying to deny the exemption, whereas the Notification as interpreted on the basis of the language used therein, cannot restrict the exemption being extended to pipes used for delivering water upto subsequent storage points which are part of the water treatment project.”

10. In view of our findings as above, we hold that the impugned Order passed by the lower Appellate Authority extending exemption to the Respondents does not

> require any interference. Hence, we dismiss all the 30 Appeals filed by the Department in addition to two extra appeals filed by the Department."
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> 7. Following the aforesaid decision which has been consistently followed and upheld by the Hon'ble Supreme Court, we do not find merits in the impugned order and consequently we set aside the same. The appeals are allowed with consequential relief, if any, as per law.

17. In the case of *P & C Constructions Pvt. Ltd.* (supra), the Tribunal observed that when certificate has been issued by District Collector, and TWAD Board stating that the goods are intended for setting up of the water treatment plant, the department cannot deny the exemption. The issue was in respect to the eligibility of credit on PSC pipes which were used for setting up of the water treatment plant and needed for carrying water from its source to the plant and from there to the storage facility. The Tribunal observed as under:

> 7. The main ground raised by Revenue is that certificate issued by the District Collector cannot be accepted as the basis for compliances of the condition in the notification. We are able to agree t 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 letter issued by the Executive Engineer, TWAD Special Division Cuddlier whiten to the department seeking information about the exemption of the duty eligible to the appellant ns well as for further information regarding clearances of goods. When the certificate has been issued by the District Collector and well as TWAD Board authorities, we have to say that department cannot deny the exemption by merely red upon a letter issued by Executive Engineer, Special Division, Cuddalore. In the case of Jain Imation 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 TIOL 262-SC-CT 2004 (178) ELT 13 (SC). The relevant portion of the Supreme Court judgment is reproduced as under
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>> "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 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 lint 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 appeals are allowed with relief if any as per law.

18. In the case of *M/s. Indian Hume Pipe Company* (supra) the issue was with regard to eligibility of exemption on pipes used beyond the first storage facility. The Tribunal relied upon the earlier decision and observed as under:

"3. It is brought to our notice that in respect of the very same appellant, with reference to their Tirunelveli unit, the very same dispute was brought before the Tribunal for a decision. The Tribunal vide Final Order no. 41985-41988/2017 dated 06.09.2017 held as under:-

> 8. On the first issue regarding the liability of the appellant under Notification No 6/2002-CE, we note that all supplies of pipes are made in terms of the certificate issued by the jurisdictional District Collectors The certificates categorically mentioned the requirement of pipes for the projects referring to the above mentioned Notification. However, the Revenue held a view that wherever there is no treatment plant the whole exemption will not apply. Here we note that this is against the certificate issued by the District Collector Generally, when an exemption notification is to be extended based on a certificate by third party Government authority, such certificates unless repudiated are to be accepted for extending the benefit. Such view has been taken by the Tribunal in various cases A reference can be made to the recent decisions in the cases of P&C Constructions P Ltd. Vs Commissioner of Central Excise Final Order No. 41721/2017 dated 11.8.2017. The similar decisions can be referred to in Jain Irrigation Systems Ltd Vs Commissioner of Central Excise 2017-TIOL-918-CESTAT MUM, M/s Laxmi Pipes and Fittings Pvt. Ltd. Vs. Commissioner of Central Excise 2017-TIOL-2160-CESTAT-DEL and in the appellant's own case vide Final Order No 42123/2016 dated 1.11.2016. In view of the consistent finding of the Tribunal, on similar set of facts, we find denial of exemption is not tenable. Here we also note that the id counsel submitted that the treatment plant does not mean an elaborate establishment of machinery. There can be a situation

where the water can be made fit for distribution for human consumption, by a simple process including at the place of source It is his case that the plant cannot be so strictly interpreted to refer to only an elaborate process of treatment.

9. Regarding the demand under section 11D of the Act, wo note that the said section stipulates that any person who has collected any amount in excess of duty assessed shall forthwith pay the amount so collected to the credit of the Central Government. Sub-section (1A) is added with effect from 10.5.2008 and the same is not applicable to the period in dispute in the present appeals Sub- section (1) only talks about collecting any amount in excess of excise duty, representing as excise: duty Apparently, in the present case, the invoice raised by the appellant did not represent any excise duty However, Revenue proceeded against them only on the inference that the contract boing inclusive of duty payable it will necessarily lead to a conclusion that the excise duty element is inbuilt and the appellant did collect the same. Support was taken from the ledger entry as indicated above. We note that the appellant accepted the said ledger entry which was also recorded in the show cause notice that they have reversed such entry recorded on due advice from the auditors. We note that even otherwise to apply the provisions of section 11D(1), it is to be clearly established that the appellant did collect any amount, in excess of excise duty payable, as if representing excise duty to invoke such provision. In the present case, no such evidence is available to attract the provisions of Section 11D(1) We also refer to the decisions of the Tribunal in the case of Poddar Industrial Corporation Vs Commissioner of Central Excise 2003 (158) ELT 473 (Tri. Kol); Commissioner of Central Excise Vs. Tapi RCC 2005 (186) ELT 107 (Tri. Mumbai), Shreyans Industries Ltd Vs. Commissioner of Central Excise 2005 (179) ELT 351 (Tri. Del) and Ascent Laboratories Ltd Vs Commissioner of Central Excise, Mumbai-2008 (221) ELT 583. In various decisions, Tribunal held that if there is a composite contract for consideration which show excise duty is inclusive, a demand under section 11D cannot be raised.

10. In the present case, there is no evidence that the sales document namely invoices etc. indicated any excise duty separately so that the buyer has paid any money representing excise duty to the appellant. In the absence of such situation, the provisions of Section 11D cannot be attracted and the impugned order is without merit.

4. In view of the above decision of the Tribunal in the appellant’s own case, involving similar set of facts, we find no merit in the impugned order and accordingly the same is set aside and the appeal is allowed.

19. The Ld. AR has relied upon the decision in the case of *Precise Engineer* (supra). On perusal of the facts of the case, it is seen that

the goods on which exemption was claimed by the appellant was Extension Bellows. The assessee claimed that these are components of water treatment plant. However, the facts do not show that the appellant had produced certificate issued by the District Collector stating that the goods were intended for setting up of water treatment plant. The Ld. AR has also relied upon the decision of the Tribunal in the case of *Pradeepa Industries Ltd. 2005 188 ELT 433 Tribunal, Mumbai* which was appealed before the Hon'ble High court of Bombay as reported in 2015 (318 ELT A 216), Bombay. It is argued by the Ld. AR that the Tribunal in the said case held that *"Units of the water supply project covered by the project import regulations as covered under Headings 98.01 would be only water treatment plants. The pipes imported under project import were meant as parts / components or equipment used in water distribution improvement scheme and not in water treatment plant Unit and therefore not eligible to the benefit of the Heading 98.01 of Customs Tariff Act 1975."* The Ld. AR has not produced the entire judgement passed by the Tribunal. However, from the notes produced in regard to the appeal filed before the Hon'ble Bombay High Court, we find that the issue considered in the case with regard to notification no.42/96 Cus dated 23/07/1996 and the issue of notification 6/2006. This decision does not apply to the facts of the case before us.

20. After appreciating the facts, evidence and also following the decisions discussed in paras 16 to 18 above, we are of the

considered opinion that the rejection of the refund claims is not justified. The impugned orders are set aside. The appeals are allowed with consequential reliefs if any.

(Dictated and pronounced in court)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI C.S.)
Member (Judicial)

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