IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

EXCISE APPEAL NO. 41992 of 2014

(Arising out of Order-in-Appeal No. 101/2014CM-III dated 10.06.2014 passed Commissioner of Central Excise (Appeals) 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai-600 034)

M/s. Murugappa Morgan Thermal Cramics Ltd. **: Appellant**
Plot No. 26 & 27, SIPCOT Industrial
Complex, Ranipet-632 403.

VERSUS

The Commissioner of Central Excise, **: Respondent**
Chennai III Commissionerate.
26/1, Mahatma Gandhi Marg,
Nungambakkam, Chennai-600 034.

APPEARANCE:

Shri M. Kannan, Advocate
For the Appellant

Shri Selva Kumar, Assistant Commissioner (A.R.)
For the Respondent

CORAM:

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

FINAL ORDER NO. 40182/2024

DATE OF HEARING / DECISION :13.02.2024

Order : [Per Mrs. Sulekha Beevi C.S.]

Brief facts are that the appellant is engaged in manufacture Ceramic fiber and products falling under Chapter 69 of the first schedule to Central Excise Tariff Act, 1985. They procured an order for supply of ceramic fiber board, standard and twisted rope under Notification No. 33/2005-CE dated 08.09.2005 to M/s. Timarpur Okhla Waste Management Company Pvt., Ltd., New Delhi for setting up of power generation project using non-conventional materials. During verification of ER-I returns for March 2011, it was found by the Department that the appellant had cleared 1735 Nos. of Indwool Ceramic Fiber Board and 2765 Mts. of Standard and Twisted rope for the said projects without payment of duty. The Department was of the view that these goods are used just for insulating the furnaces /Kilns and are not eligible for the benefit of the Notification No. 33/2005-CE dated 08.09.2005. Show Cause Notice was issued proposing to deny the benefit of the Notification and also to demand the duty along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand, interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the same. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. counsel Shri M. Kannan appeared and argued for the appellant. The relevant part of the exemption Notification No. 33/2005-CE dated 08.09.2005 was adverted to by the Ld. counsel and is reproduced as under:-

Notification 33/2005-CE dated 08.09.2005, exempts;

> *"all items of machinery, including prime movers, instruments apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for initial setting-up of the project for generation of power using non-conventional materials"*

3. It is submitted by the Ld. counsel that the Adjudicating Authority as well as the Commissioner (Appeals) has denied the benefit of Notification stating that the Ceramic Fiber Board and Ceramic Fiber Twisted Rope are not directly used for the power generation. It is submitted that these materials are used as insulating material for the furnace / Klins. Such insulation prevents the loss of energy due to radiation of thermal heat and therefore acts as an energy saving component. Further, it prevents metal headers from damage due to direct exposure of flame in the furnace area. Such insulation helps to observe and maintain the temperature in a particular range. The insulation also acts as a safety from the heat radiation to the surroundings. Such insulation is an essential part of the boiler and the power project. It is thus argued by the Ld. counsel that the denial of the benefit of the Notification is without any legal basis.

4. The Ld. counsel relied upon the decision in the case of *Chemplast Sanmar Ltd Vs. CCE, Tiruchirapalli*

2007(207) ELT 92 (Tri-Chennai) to argue that in the said case the Tribunal considered the question of eligibility of CENVAT Credit on ceramic fiber used to insulate furnace and pipeline and held that the credit is eligible under capital goods as these are essential parts of furnace. It is prayed that the appeal may be allowed.

5. The Ld. Authorized Representative Shri M. Selvakumar appeared and argued for the Department. Paragraph 10 of the impugned order was referred by the Ld. AR to submit that a project cannot be called a power project unless it generates power. In the instant case the goods do not play any role in the generation of power. The items are not intended to be used in any power generation plant. These goods only increase the functional efficiency of the boilers. That therefore, the Commissioner (Appeals) has rightly upheld the demand, interest and penalties. The Ld. AR prayed that the appeal may be dismissed.

6. The issue to be considered is whether the goods in the nature of ceramic fiber board and ceramic fiber twisted rope are eligible for exemption under Notification No. 33/2005-CE dated 08.09.2005.

7. On perusal of the impugned order as well as the discussions made by the Original Authority, it is seen that the main reason for denying the benefit of Notification is that these goods do not have any direct role in power generation. We are not able to endorse the said view. The Ceramic Fiber Board and Ceramic Fiber Twisted Rope are required for making the insulation on the furnace and without such insulation the heat cannot be controlled and so also the safety around the furnace cannot be ensured. These form essential part of the boiler and therefore are eligible for the benefit of Notification. The Tribunal in the case of *Chemplast Sanmar Ltd Vs. CCE, Tiruchirapalli 2007(207) ELT 92 (Tri-Chennai)* had observed that these materials are eligible for credit as capital goods as these form part of the furnace and pipeline used in the factory. Again it is to be stated that as per the exemption Notification, all items which are used for setting up of the project for generation of power using non-conventional materials is eligible for the benefit of exemption.

8. From the foregoing, we find that the demand cannot sustain. The impugned order is set aside.

The appeal is allowed with consequential relief, if any, as per the law.

(Dictated and pronounced in the open court)

(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

RKP