CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH
COURT NO. I

EXCISE APPEAL NO. 51186 OF 2022

[Arising out of the Order-in-Appeal No. 58-60 (CRM)/CE/JDR/2021 dated 24/02/2021 passed by The Commissioner, Central Excise & Central Goods & Service Tax Commissionerate, Udaipur.]

The Commissioner, Central Excise & Central Goods & Service Tax Commissionerate, **Appellant**
142-B, Hiran Magri, Sector – 11,
Udaipur – 313 001 (Raj.).

VERSUS

M/s Om Metals Infraprojects Ltd., **Respondent**
B-117, Indraprastha Industrial Area,
Kota (Raj.).

APPEARANCE

Shri Unmesh Kumar, Authorized Representative (DR) – for the Department
Shri Rishabh Khandelwal, Advocate– for the respondent.

CORAM: HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE SHRI P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51337/2023

DATE OF HEARING: 13.09.2023

JUSTICE DILIP GUPTA:

The department has filed this appeal against the order dated 24.02.2021, passed by the Commissioner (Appeals) allowing the appeal filed by the respondent M/s Om Metals Infraprojects Ltd.[1] after placing reliance upon two decisions of the Tribunal in the respondent's own case holding that it would be eligible for duty exemption on Huydel Gates, Hoist Mechanism & Gate Parts and materials including mandatory tools and tackles for hydro mechanical works cleared to Mega Power Project of NPTC in terms of Notification No. 06/2006-CE dated 01.03.2006 and Notification No. 12/2012-CE dated 17.03.2012.

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1. the respondent

2. The respondent was awarded a contract for supply of equipment and material for Tapovan Vishnugarh Hydro Electric Project. A certificate dated 30.06.2006 was issued by the Joint Secretary according statue of Mega Power Project to the said Hydro Electric Project. NTPC issued a global invitation through International Competitive Bidding process on 28.09.2006. The contract was awarded to the respondent and an Agreement was signed between the respondent and NTPC on 12.12.2007. According to the appellant, it was entitled to exemption under the Notification dated 01.03.2006 under which all goods supplied against international competitive bidding were subjected to nil rate of duty.

3. However, show cause notices were issued to the respondent denying the benefit under the notification and the Adjudicating Authority denied the exemption claimed under the notification.

4. It is against the orders passed by the Adjudicating Authority that an appeal was filed before the Commissioner (Appeals).

5. The Commissioner (Appeals) allowed the appeal holding that the issue was covered by the decision of the Tribunal in the case of the respondent delivered on 13.08.2013, 08.11.2016 and 24.04.2017. The relevant portion of the order passed by the Commissioner (Appeals) is reproduced below :-

> "6. I find that the appellant cleared the goods to Tapovan Vishnugarh Hydro Electric Project and availed the benefit of duty exemption provided under Notification No. 06/2006-CE dated 01.03.2006 and 12/2012-CE dated 17.03.2012 read with Notification No. 21/2002-Cus dated 01.03.2002. The benefit under the said notifications was claimed by the appellant on the ground that the goods were cleared to NTPC under

International Competitive Bidding. I observe that the S. No. 91 of the table given in Notification No. 6/2006-CE dated 01.03.2006 to all the goods falling under any chapter of the first schedule, to the, Central Excise Tariff Act, 1985 if these goods are supplied against International Competitive Bidding. In terms of the above notification, exemption has been granted to the goods falling under any chapter when they are supplied against International Competitive Bidding. The exemption is subject to the condition no. 19 which is as under :

> "If the goods are exempted from the duties of customs leviable under the First Schedule to 'the Ciistorris Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India".

In terms of the above condition, the goods supplied against International Competitive Bidding are eligible for exemption if such goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. Corresponding entry for such exemption is available at Notification No. 21/2002-Cus dated 01.03.2002. Sr. No. 400 of Notification No. 21/2002-cus dated 01.03.2002 (Now Sr. No. 507 of Notification No. 12/2012-Cus dated 17.03.2012) exempts the goods classified under Chapter heading 98.01 of the Customs Tariff Act 1975 from the entire duties of Customs :-

> "Goods required for setting up of any Mega Power Project, so certified by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Power"

7. I find that the appellant submitted copy of certificate issued in June, 2006 by the Joint Secretary, Government of India, Ministry of Power which is not in dispute. The appellant contended that the goods are not imported but the same are supplied domestically against International Competitive Bidding therefore, appellant was not required get the contract registered

under the Project Import Regulation, 1986. I find that on identical issue the Hon'ble CESTAT, New Delhi vide Final Order No. A/57347/2013-EX (DB) dated 13.08.2013 in their own case has decided in their favour and the Hon'ble CESTAT held that goods manufactured in India cannot be classified under 98.01 of the Customs Tariff, denial of exemption on the ground of non-fulfilment of condition of Project Import Regulation is not sustainable and appellants are eligible for exemption under Notification No. 06/2006 dated 01.03.2006.

8. I find that on identical issue the Hon'ble CESTAT, New Delhi vide Final Order No. A/57347/2013 – EX (DB) dated 13.08.2013 in their own case has decided in their favour.

9. I find that identical issue of their own has been decided in their favour by the Hon'ble CESTAT vide Final Order No. A/55013/ 2016 – EX (DB) dated 08.11.2016 wherein it has been held that "… In the instant case as the issue is squarely covered by the earlier decision in assessees own case i.e. Om Metals SPML (JV) Unit-2 V. CCE & ST, Jaipur – 2013 (298) E.L.T. 79 (Tri. – Del.). When the issue is squarely covered by the earlier decision, we find no merit in the order passed by the Commissioner, the same is set aside".

10. I find that identical issue of their own has been decided in their favour by the Hon'ble CESTAT vide Final Order No. 54245/2017 dated 24.04.2017.

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12. By respectfully following aforesaid CESTAT's Orders and findings, I therefore hold that the appellant is eligible for duty exemption on Hydel Gates, Hoist Mechanism & Gate Parts and materials including mandatory tools and tackles for hydro mechanical works cleared to Mega Power Project of NTPC in terms of Notification No. 06/2006-CE dated 01.03.2006 and 12/2012-CE dated 17.03.2012".

6. Shri Unmesh Kumar, learned authorized representative appearing for the department has referred to the appeal memo wherein it has been stated that the Commissioner (Appeals) committed an error in relying upon the case laws which were not accepted by the department and were only withdrawn from the Supreme Court on monetary limits as the tax effect in the case was less than Rupees one crore.

7. Shri Rishabh Khandelwal, learned counsel appearing for the respondent has, however, supported the impugned order passed by the Commissioner (Appeals) and has submitted that the Commissioner (Appeals) committed no illegality in allowing the appeals, after placing reliance upon the three decisions of the Tribunal rendered in the own case of the appellant.

8. The submissions advanced by the learned authorized representative appearing for the department and the learned counsel appearing for the respondent have been considered.

9. It is not in dispute that the issue involved in this appeal is covered by the three decisions of the Tribunal in Excise Appeal No. 1963 of 2012 decided on 13.08.2013 (**M/s Om Metals Spml Jv Unit 2 versus CCE & ST, Jaipur**); Excise Appeal No. 57347 of 2013 decided on 08.11.2016; and Excise Appeal No. 1085 of 2012 decided on 24.04.2017 (**M/s Om Metals Infraprojects Limited versus CCE, Jaipur)**.

10. All that is contended by the learned authorized representative for the department is that these decisions would not have any binding effect in view of the Circular dated 20.10.2010 issued by Central

Board of Indirect Taxes and Customs. Paragraphs 7, 8, 9 of the Circular are reproduced below:

> "7. **It may also be noted that, wherever it is decided not to file appeal in pursuance of these instructions, which are aimed solely at reducing Government litigation, such cases shall not have any precedent value. In such cases, Commissioners should specifically record that "even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit prescribed by the Board".** Further, in such cases, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same assessee or in case of any other assessees, if the amount involved exceeds the monetary limits. **Thus, in case any prior order is being cited on facts and law, it must be checked whether such order(s) were accepted only on account of the monetary limit before following them in the name of judicial discipline.**
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> 8. In respect of an order where it is decided not to file appeal in pursuance of these instructions, a data base needs to be created so that all the Commissionerates are made aware of the orders that are accepted solely on the ground that the revenue involved is below the threshold prescribed herein and which should not be taken as having precedent value. The details of such orders in respect of CESTAT and the High Courts is required to be furnished by the Zonal Chief Commissioners in Proforma enclosed (Annexure III E & Annexure III F) which should form part of the Monthly Technical Report being sent to the Directorate of Legal Affairs for posting on the departmental website. These Annexures III E and III F should be sent to the Directorate of Legal Affairs by e-mail also to dia-rev@nic.in.

> 9. The above instructions of the Board must be adhered to strictly for all appeals filed on or after 01.11.2010.”

11. It is open to the Board to issue instructions that appeal should not be filed where the monetary aspect is not very high to reduce litigation, but it cannot be urged by the appellant that the decision of the Tribunal would not have any precedent value. Any decision of the Tribunal would continue hold the field till it is set aside by the High Court or the Supreme Court.

12. It is only because of the Circular that a ground has been taken in this appeal that the Commissioner (Appeals) erred in relying upon case laws which were not acceptable to the department as the appeal was withdrawn from the Supreme Court on monetary limits. The intention of the Circular is to prevent an assessee from asserting that the department has accepted the decision. ‘Such cases’ in the Circular refers to decisions taken by the authority not to file an appeal because of monetary limits and not to the decision of the Tribunal.

13. The Commissioner (Appeals) was bound by the decisions of the Tribunal in the case of appellant covering the same issue and, therefore, rightly allowed the appeal.

14. There is, therefore, no merit in this appeal. It is accordingly dismissed.

(Dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

PK, Shreya