IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/3159/2010 [SM]

[Arising out of Orders in Appeal No. IND-I/146/2010 dated 14.06.2010, passed by the Commissioner (Appeals), Central Excise & ST, Indore.]

For approval and signature:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Shri Jai Hanuman ….Appellant

vs.

CCE & ST, Indore ….Respondent

Appearance:

None for the Appellants
Shri M.R. Sharma, AR for the Respondent

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 05.01.2017

Date of Pronouncement : 12.01.2017

FINAL ORDER NO. 50308/2017 (SM)

Per V. Padmanabhan

The present appeal has been filed against the Order-in-Appeal dated 14.06.2010 passed by Commissioner (Appeals), Indore.

2. In the impugned order penalty to the tune of Rs. 3,17,308/- has been upheld on the appellant. The appellant is a Co-operative Society and has undertaken to provide water supply to the villagers of village Minache for agricultural purpose. They obtained necessary certificates from the District Collector, Kolahpur and procured pipes under Notification No. 3/2004-CE dated 08.01.2004, without payment of duty from M/s. Laxmi Pipes and Fittings,

Pithampur. Subsequent to clearance of pipes, Revenue under took investigation against M/s. Laxmi Pipes and Fittings as well as the appellant and came to the conclusion that the pipes cleared without payment of duty is in contravention of the provisions of relevant Notification 3/2004-CE. Accordingly, duty was demanded from M/s. Laxmi Pipes and Fittings and penalty to the tune of Rs. 3,17,308/- was imposed on the appellant vide OIO dated 06.11.2009. When appeal was filed before Commissioner (Appeals), he upheld the penalty against the present appellant.

2. With the above background, I have heard Shri M.R. Sharma, ld AR for the Revenue. No one appeared for the appellant. The appellant submitted a letter dated 13.12.2016 requesting for decision of the case without their attending the hearing.

3. Notification 3/2004-CE dated 08.01.2004 reads as follows:-

> **"**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 –
>
> (i) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components/parts required for setting up of water supply plants; and
>
> (ii) Pipes needed for delivery of water from its source to the plant and from there to the storage facility,
>
> falling under the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from whole of the duty of excise leviable thereon under the said First Schedule, subject to the condition that a certificate issued by the Collector/Deputy Commissioner/District Magistrate of the District in which the project 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 above.
>
> *Explanation.-* For the purpose of this notification, water supply plant includes a plant for desalination, demineralization or purification of water or for carrying out any similar process or processes intended to make the water fit for agricultural or industrial use.**"**

4. It is on record that the appellant is a co-operative society and after taking necessary certificate from the District Collector, Kolahpur have procured the pipes for supply of water in their village. Revenue's grievance with reference to extending the benefit of notification is that the pipes cleared from M/s. Laxmi Pipes and Fittings have been used for transportation of water from pumping station to the agricultural land whereas, the notification contemplates for use of pipes for delivery of water from its source to the plant and from there to the storage facility. Revenue concluded that since there is no storage facility in the proposal made by the appellant and hence, the benefit of notification will not be available.

5. The submission of the appellant is that the pipes have been used first to the pump house and then to the water chamber of the agricultural land owners. The water chambers are in fact used for storage of water. They have also enclosed drawings and layout plan of water supply, if considered together will clearly show that the water supply scheme is having the water storage facility also.

6. The purpose of the Notification No. 3/2004-CE is to give benefit for clearance of pipes without payment of duty to facilitate rural agricultural water supply scheme. Such schemes are administered by the District Collector of the relevant district. Accordingly, the District Collector will be in a position to know the details of the scheme and has authorized procurement of pipes without payment of duty, as per requirement. Hence, once the District Collector issued

the certificate, after considering the water scheme, I feel the benefit of notification should be extended. The penalty stands imposed under Rule 26 for dealing in excisable goods which are liable for confiscation. The imposition of penalty is totally unjustifiable and liable to be set-aside.

7. In view of the above, the impugned order is set-aside and the appeal is allowed.

[Pronounced in the open Court on 12.01.2017]

(V. Padmanabhan)
Member (Technical)

KL