CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 06.04.2017

Excise Appeal No. 55348 of 2013 with
E/C.O. No. 57106 of 2013

(Arising out of order-in-appeal No. IND/CEX/000/APP/321/12 dated 00.10.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore).

M/s Lloyd Insulations India Limited Appellant

Vs.

CCE&ST, Indore Respondent

Appearance:

Sh. Amit Jain, Advocate for the assessee
Sh. R. K. Mishra, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No.52769/ 2017

Per: **Justice (Dr.) Satish Chandra:**

The present appeal is filed by the appellant against the order-in-appeal No. IND/CEX/000/APP/321/12 dated 09.10.2012 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Indore. The period of dispute is from January 2005 to May 2009.

2. The brief facts of the case are that during the period under consideration, the appellants were engaged in the manufacture of Rigid Polyurethane Foam & Pre-fabricated Insulated Buildings falling under Chapter 39 & 94 respectively of the First Schedule to the Central Excise Tariff Act, 1985. The goods manufactured by the appellant are supplied for use in construction of warships of

the Indian Navy. Since Indian Navy does not build the ships or vessels on their own, therefore various ship builders are engaged by them, who, based on the orders placed on them by the Indian Navy, build the warships. Thus, the materials manufactured by the appellants were supplied to ship builders who used the same for construction of ships and vessels for Indian Navy or Coast Guard. In some cases, goods were also supplied directly to the Indian Navy or Coast Guard as stores for use on board their vessels.

3. The appellant cleared the goods claiming exemption under Sl. No. 21 of Notification No. 64/95-CE dated 16.03.1995, on procurement of requisite certificates issued by the Rear Admiral or Director General as prescribed under the said entry of the Notification, for supplies made to the ship builders. In cases where the goods were supplied directly to the Indian Navy or Coast Guard for use as stores on board their vessels, exemption was claimed by the appellant under Sl. No. 3 of Notification No. 64/95. The aforesaid claim of exemption was denied by the lower authorities. Being aggrieved, the present appeal is filed by the appellants.

4. With this background, we heard Shri Amit Jain, ld. Advocate for the appellants and Sh. R. K. Mishra, ld. AR for the Revenue.

5. After hearing both the parties and on perusal of record, it appears in para 5.2 of the impugned order-in-appeal it is observed that -

> *"the appellant's lawyer in spite of his own request to provide four week's time for submission of the certificates from the appropriate authority, could not produce the requisite certificates even after a lapse of three month's period".*

6. During the course of arguments, ld. Counsel for the appellant submits that the said certificates are available now and the same can be produced before the lower authorities. In view of above and in the interest of justice, we set-aside the impugned order and remand the matter to the adjudicating authority to decide the issue denovo and after examining the genuineness and relevance of the certificates in question. The adjudicating authority will decide the issue denov0 in the light of above discussion, but by providing an opportunity of hearing to the assessee. Additional evidence, if necessary, may be admitted as per law.

7. In the result, the appeal is allowed by way of remand. Cross –objection also stands disposed of accordingly.

(Dictated and pronounced in the open Court).

(Ashok K. Arya)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant