CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 2253 of 2011

(Arising out of Order-in-Appeal No. 121(CB)CE/JPR-II/2011 dated 21.06.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II)

DATE OF HEARING : 05.04.2017
DATE OF DECISION : 05.04.2017

M/s Toshniwal Indus. Pvt. Ltd. …. Appellants
(Rep by Sh. Dhrut Tiwari, Adv.)

VERSUS

CCE, Jaipur-II …. Respondent
(Rep. by Sh. H.C. Saini, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 52774/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed against the Order-in-Appeal No. 121 (CB)CE/JPR-II/2011 dated 21.06.2011 passed by the Commissioner of Central Excise (Appeals), Jaipur-II. The period in dispute is January 2008 to February 2008.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were manufacturing CCTV System amongst other goods, classifiable under Chapters 85 and 90 of the First

Schedule to the Central Excise Tariff Act, 1985. M/s National Thermal Power Corporation (NTPC), a Government of India Enterprise, floated open tenders i.e. International Competitive Bidding (ICB) for supply of equipment etc. required for Kahalgaon Super Thermal Project, Stage-II, Phse-II at Kahalgaon, District Bhagalpur and for Sipat Super Therma Power Project, State-II at Sipat, District Bilaspur. M/s BHEL was awarded the contract for installation, testing and commissioning of said project. For that purpose, BHEL placed purchase orders on the assessee-Appellants for supply of CCTV systems. Against this order, they supplied the goods valued at Rs. 60,60,129/-. These goods were cleared without payment of duty after availing exemption under the Notification No. 6/2006-CE dated 01.03.2006. The Department has denied the said exemption. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Dhrut Tiwari, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Department.

4. Shri Dhrut Tiwari, learned counsel for the assessee-Appellants submits that they have satisfied the conditions of Notification No. 6/2006-CE (Sr. No. 91) as specified at Condition No. 19 read with Condition No. 86 prescribed in Customs Notification No. 21/2002-Cus (Sr. No. 400) dated 01.03.2002, inasmuch they produced all the requisite certificates. He also submits that there is no condition in the exemption notification that the condition specified in the Foreign Trade Policy has to be satisfied. If at all those conditions were required to be satisfied, he contends that the assessee-Appellants have satisfied the conditions in Para 8.6.1 of the Policy and Para 8.6.2 is not applicable to them. Para 8.6.1 and 8.6.2 of Foreign Trade Policy 2004-09 is reproduced for ready reference :

> **"8.6.1 Supplies to be made by the main/sub-contract**
>
> In all cases of deemed exports, supplies shall be made directly to designated Projects/Agencies/Units/Advance Authorisation/ EPCG

Authorisation holders, Sub-contractor may, however, make supplies to main contractor, instead of supplying directly to designated projects/agencies. Such supplies shall be eligible for deemed export benefits as per procedure laid down in paragraph 8.4 of HBP v1.

8.6.2 Supplies made by an Indian sub-contract of an Indian or foreign main contractor directly to the designated projects/agencies, shall also be eligible for deemed export benefits provided sub-contractor as indicated either originally or subsequently in the contract, and payment certificate is issued by project authority in the name of sub-contractor as in Appendix 22C of HBP v1.**"**

To support his submissions, he relied on the following decisions :

(i) **Sarita Steels & Industries vs CCE,** 2011 (264) ELT 313 (Tri- Bang.); and

(ii) **CST Ltd. vs CCE,** 2007 (217) ELT 513 (Tri.-Bang.)

5. On the other hand, Shri H.C. Saini, learned DR for the Department, while justifying the impugned order submits that the name of the assessee-Appellants was not mentioned in the certificates. Further, the learned DR submits that the assessee-Appellants were not approved as a sub-contractor. Thus, they are neither a contractor who participated in International Competitive Bidding nor sub-contractor for supply of the goods and hence they are not eligible for the exemption under the said Notification.

6. After hearing both sides and on perusal of record, it appears that the Tribunal has decided (supra) that it is not necessary that the manufacturer supplying the goods to the mega power projects should have participated in International Competitive Bidding so long as the goods are supplied to such contract was awarded to a person who took part in the International Competitive Bidding and it is proved that the goods were in fact supplied to such power project and the equipments were installed at the project site. What we noticed is that neither the benefits under Notification No. 21/2002-

Cus (Sr. No. 400) nor the exemption under Notification No. 6/2006-CE (Sr. No. 91) is subject to any conditions stipulated in Foreign Trade Policy. BHEL as the main contractor could have imported the impugned goods without payment of Customs duty in view of Notification No. 21/2002-Cus (Sr. No. 400). Notification No. 6/2006-CE Sr. No. 91 only makes it possible to procure such goods locally without payment of excise duty if BHEL so desires and BHEL opted for local procurement from the assessee-Appellants. So, naturally the assessee-Appellants should be eligible for exemption under Notification No. 6/2006-CE (Sr. No. 91). Prima facie, the deemed export benefits dealt within para 8.6.1 and 8.6.2 deal with incentive granted by DGFT and not exemption granted by Ministry of Finance and there is no reason to refer to those conditions so long as they are not referred to in the Notification claimed. The main point to be noticed is that relief from excise duty is not granted through the mechanism of deemed export but administered through exemption notification issued. We note that Revenue has not made any case that any of the conditions specified in the exemption notification is not fulfilled. It is already decided by the Tribunal (supra) that exemption cannot be denied for the reason that sub-contractor did not take part in International Competitive Bidding.

7. In view of the above discussion, we set aside the impugned order and allow the appeal.

8. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

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