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

Date of hearing/decision: 18.04.2017

Excise Appeal Nos. 1604 - 1605 of 2011

(Arising out of order-in-original No. 02 & 03/COMMR/C.EX/ADJ/BPL-1/2011 dated 17.02.2011 passed by the Commissioner of Central Excise, Bhopal).

M/s GEI Industrial Systems Limited Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Sh. Z. U. Alvi, Advocate for the appellant
Ms. Suchitra Sharma, Commissioner (AR) for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 52974 – 52975/2017

Per: Justice (Dr.) Satish Chandra:

The present appeals are filed against the order-in-original No. 02 & 03/COMM/C.EX/ADJ/BPL-1/2011 dated 17.02.2011 passed by the Commissioner of Central Excise, Bhopal. The period of dispute is from Feb. 2009 to April 2009.

2. Brief facts of the case are that during the period under consideration, the appellants were engaged in the manufacture of heat exchanger and parts thereof chargeable to Central Excise duty under sub-heading No. 84195090 and 84199090 of the Central Excise Tariff Act, 1985. The Department has

denied the exemption under Notification No. 6/06-CE dated 1.3.2006 by observing that the appellant has not participated International Competitive Bidding Being aggrieved, the present appeals have been filed by the appellant.

3. With this background, we heard Shri Z. U. Alvi, ld. Advocate for the appellant and Ms. Suchita Sharma, ld. Commissioner (AR)for the Revenue.

4. After hearing both sides and on perusal of record, it appears that the identical issue has come up before the Tribunal, for the earlier period, in the appellant's own case vide Final Order No. 52123/2017 dated 06.03.2017, where it was observed that-

> "6. *We find that the adjudicating authority is denying the exemption notification to the appellant only on the ground that the appellant had not participated in ICB and that he had imported the raw material. We find that similar /identical issue was before the Bench in respect of the Notification precursors the Notification No. 6/2006-CE and 91/2004-Cus in the case of CST Ltd. (supra). The Bench after considering all the submissions made by both sides in paragraph No. 6 held as under:*
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> > ***6.*** *The learned Advocate brought to our notice the relevant conditions of the exemption Notification. In terms of Notification No. 48/2004, against Sl. No. 301, "all goods supplied against International Competitive Bidding, falling under any Chapter" are exempted subject to condition 64 of the Notification. Condition 64 reads as follows :-*
> >
> > *"64. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India."*
> >
> > *It is not in dispute that the goods imported for supply to Mega Projects are entitled to whole duty exemption under Customs Tariff Act. The next thing to be examined is whether the goods supplied are against International Competitive Bidding. The appellants are a sub-contractor of M/s. BHEL. M/s. BHEL is executing the Mega Project for Kahalgaon Super Thermal Power Project by International Bidding. The appellants have submitted all the relevant records. The appellants are also found in the list of sub-contractors. Since the goods are supplied by the appellants to BHEL, who are executing the project by*

> *International Competitive Bidding, it is very clear that the goods cleared by the appellants should be considered as "goods supplied against International Competitive Bidding". There is absolutely no need that the appellants themselves should have been the bidder in International Competitive Bidding. In huge projects, the main contractor does not do everything. There is always a system of sub-contractors. If we take a view that the goods cleared by sub-contractors are not entitled for exemption on the ground they are not the bidders, the very purpose of the Notification would be defeated because the main contractor will be having hundreds of sub-contractors in Mega Projects. In our view, inasmuch as the appellants had supplied the goods to M/s. BHEL, who are the bidders of International Competitive Bidding, the condition of the Notification is satisfied and there is no justification for denying the exemption notification to the appellant. The Tribunal, in the case of Automatic Electric Ltd. v. CCE, Mumbai - 2004 (178) E.L.T. 524 (Tri.-Mumbai), has held that the benefit of exemption under Notification 108/95-C.E. is available to a sub-contractor when M/s. BHEL is the main contractor of an approved project. The fact that there was a contract between the main contractor and the sub-contractor will ensure that supplies made eventually reach the project site. The ratio of the above case is clearly applicable to the present case. In these circumstances, we set aside the impugned order and allow the appeals with consequential relief, if any.*

6. By following our earlier decision (supra), we find no justification to sustain the impugned order and the same is hereby set-aside.

7. In the result, appeal filed by the appellant is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant