IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 23/05/2017.
DATE OF DECISION : 23/05/2017.

Excise Appeal No. 3770 of 2012

[Arising out of the Order-in-Original No. COMMISSIONER/RPR/ CEX/48/2012/8951 dated 30/08/2012 passed by The Commissioner, Customs & Central Excise, Raipur.]

M/s Bhilai Engineering Corporation Limited Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri B.L. Narsimhan, Advocate – for the appellant.

Ms. Suchitra Sharma, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53416/2017 Dated : 23/05/2017

Per. B. Ravichandran :-

The appellant is aggrieved by the order dated 30/08/2012 of Commissioner of Central Excise, Raipur. The appellants are engaged in manufacture of articles of iron and steel, engineering goods etc. liable to Central Excise duty. The dispute in the present appeal relates to duty liability of boiler components cleared by the appellant during the period March 2011 to

February 2012, claiming exemption under Notification No. 6/2006-CE dated 01/03/2006, to BHEL, for setting up of various Thermal Power Plants. The Revenue entertained a view that the appellants were not be eligible for the said exemption as the condition of said notification was not fulfilled by them. Accordingly, proceedings were initiated by way of issue of notice dated 30th March, 2012 to the appellant. The notice specifically alleged that single power plant must have the capacity of 1,000 MW or above to claim the exemption as mega power plant under Notification No. 6/2006-CE. Since, the project for which the appellants were supplying components are having power plants with capacity 500/600/800 MW each, the exemption was sought to be denied to the appellant.

2. The case was adjudicated by the Commissioner who accepted the appellants claim regarding the nature of project being Mega Power Project, considering the overall power capacity in the project. However, the Original Authority denied the exemption to the appellant on entirely different reason. He held that the exemption under Notification No. 6/2006-CE is available when the goods were supplied against international competitive bidding and the said goods are exempted from duty of customs when imported into India. The applicable notification for customs duty exemption was identified as Notification 21/2002-CUS. The Original Authority, applying condition No. 86 of the said notification, held that the appellants are not eligible for exemption as clause (iii) of the said condition was not fulfilled by

them. Accordingly, he confirmed the central excise duty of Rs. 59,55,826/- and imposed a penalty of Rs. 10,00,000/- on the appellant under Rule 25 of Central Excise Rules, 2002.

3. The learned Counsel for the appellant submitted that the show cause notice proposed denial of exemption on the ground that the project is not Mega Power Project. Whereas, the original order accepted the project as Mega Power Project. The exemption was denied on entirely new ground, not proposed in the show cause notice. Further, even the ground mentioned in the impugned order is on erroneous application of condition of the notification, which was not existing during the relevant time. It is submitted that the said Notification 21/2002-CUS was amended and the impugned condition relied upon by the Original Authority is no more available in the amended notification which is applicable for the period in dispute in the present case. The appellants also produced certificate from the competent officer of the Government, to satisfy the fulfillment of condition mentioned in the customs notification, as amended. Accordingly, it is the case of the appellant that the impugned order is not legally sustainable for more than one reasons.

4. The learned AR reiterated the findings of the impugned order.

5. We have heard both the sides and perused the appeal records. Admittedly, the show cause notice proposed denial of exemption only on a single ground of the capacity of the project,

that was decided in favour of the appellant by the Original Authority. However, the Original Authority went ahead and denied the exemption on entirely different ground of non-fulfillment of condition 86 (iii) of Notification 21/2002-CUS. We note that the provision of notification relied upon by the Original Authority is not available during the period now under consideration. In other words, the Original Authority applied a non-existing legal provision to deny the exemption. The appellants have submitted certificate from Joint Secretary to the Government of India, Ministry of Power in terms of amended condition No. 86 of the said Notification 21/2002-CUS. As such, we find that the original order apart from deciding a issue which is not proposed in the show cause notice, took such decision on a non-existing legal provision. The said order is legally not sustainable. Accordingly, the same is set aside. The appeal is allowed.

(Order dictated and pronounced in open court.)

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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