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

Date of hearing/decision: 25.05.2017

Excise Appeal No. 3308 of 2010
(Arising out of order in appeal No. IND-I/138/2010 dated 30.04.2010 passed by the Commissioner (Appeals-I) Customs, Central Excise & Service Tax, Indore).

M/s Laxmi Pipes & Fittings Pvt. Limited Appellant

Vs.

CCE&Cus. Indore Respondent

Appearance:

Sh. Alok Barthwal & Sh. Manish Saharan, Advocates for the appellant
Sh. M. R. Sharma, AR for the Respondent

Coram:

Hon'ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 53525 /2017

Per: **Anil Choudhary**:

The issue in this appeal by the appellant, a manufacturer of PVC pipes, is whether on supplying PVC pipes under Notification No. 3/2004-CE dated 08.01.2004 have violated the provisions of the Notification and the scheme of the Act/ Rules, and are liable to duty, which provides for exemption under Section 5A(1) of the Act for the purpose like (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. Further, provided the condition that the manufacturer will supply subject to the condition that a certificate is 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.

2. The admitted facts are that the appellant have supplied goods to 'Jay Hanuman Sahakari Pani Puravatha Sannstha Maryadit' on the certificate issued by Collector, Kolhapur under the said notification, being certificate dated 15.5.2004, specifying that the said 'Jay Hanuman Sahakari Pani Puravatha Sannstha Mardadit' of Minache, Taluka Hatkanangale, has resolved to construct a Agricultural Water Supply Scheme for village Minache Tal. Hatkanangale Distt. Kolhapur by setting up water supply plants for which it intends to purchase the specified items essentially required for water supply plant, including pipeline needed for delivery of water from its source to the plant and from there to the storage facility. It is further certified that the material named therein, which are required for the execution of the water supply, pump set and pipeline upto source to water supply plant and pipeline from water supply plant to the storage reservoir of the above project. This certificate is issued for exemption of excise duty on equipments which are to be used for the construction of water supply scheme for Agricultural Purpose.

3. The case of the Revenue as per the show cause notice dated 27.06.2008 is that the scheme does not have water treatment facility like desalination, demineralization or purification of water etc. as mentioned in the explanation to the said notification. Hence the benefit of said notification is not available.

4. Heard the ld. Counsel for the appellant who have raised various grounds, inter alia, stating that so far as the appellant is concerned, under the scheme of the Act that they have acted bonafie and supplied the goods, as permitted by the notification, on the certificate of the District Collector, Kolhapur. Thus, there is no violation on their part and accordingly the show cause notice is unsustainable, and prays for setting aside the impugned order. Ld. AR relied upon the impugned order.

5. Having considered the rival contentions we are satisfied that in the facts and circumstances of the case the appellant have supplied the goods manufactured by them, PVC pipes etc. on the basis of certificate issued by the Collector, Kolhapur as required under Notification No. 3/2003-CE and no error have been found by the Revenue in the said certificate. We hold that the whole proceedings is misdirected and bad under the scheme of the Act and Rules. Even otherwise we find that the similar issue came up before a coordinate Bench of this Tribunal in ***Koya & Co. Construction P. Ltd. vs. CCE, Visakhapatnam-II -2013 (298) ELT 232 (Tri. Bang.)*** and also in the case of ***Finolex Industries Ltd. vs. CCE, Pune -2017-TIOL-335-CESTAT-MUM*** whereunder on similar facts and circumstances this Tribunal has allowed the benefit of the said notification on merits. Accordingly, we set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Dictated and pronounced in the open Court).

(Anil Choudhary)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Pant