CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 51029 of 2014

(Arising out of Order-in-Original No. COMMR/RPR/CE/109/2013/Adj dated 30.10.2013 passed by the Commissioner of Central Excise, Raipur)

DATE OF HEARING : 16.06.2017
DATE OF DECISION : 16.06.2017

M/s Jindal Steel & Power Limited. …. Appellants
(Rep by Sh. Rahul Tangri, Adv.)

VERSUS

CCE, Raipur …. Respondent
(Rep. by Ms. Suchitra Sharma, JCDR)

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

FINAL ORDER NO. 54057/2017

PER B. RAVICHANDRAN :

The present appeal is filed by the Appellants against the impugned order-in-original no. COMMR/RPR/CE/ 109/2013/Adj dated 30.10.2013 passed by the Commissioner of Central Excise, Raipur.

2. The Appellants are engaged in the manufacture of iron & steel products falling under Chapter Heading No. 72 of the Central Excise Tariff which are liable to duty. They have supplied these dutiable structural items, for setting up of mega power projects, to various contractors who were awarded the contracts through international

competitive bidding. For such supply of dutiable items, the Appellants claimed exemption under Notification No. 6/2006-CE dated 01.03.2006 (serial no. 91). The Revenue objected to the claim on the ground that the products supplied by the Appellants are classifiable under Chapter 72, whereas the exemption, which is in terms of Customs Notification No. 21/2002-Cus dated 01.03.2002, is applicable only when the goods are classified under Chapter Heading 9801 – project import. It is also contended that the Appellants did not fulfil the condition given at Serial No. 86 of Customs Notification No. 21/2002-Cus. More specifically, it is contended that the certificates of Chief Executive Officer of the project, to whom supplies were made, are not being submitted by the Appellants. Accordingly, proceedings were initiated against the Appellants which resulted in the denial of exemption and imposition of Central Excise Duty liability of Rs. 3,68,98,941/- along with equal amount of penalty. The Appellants are contesting the said order.

3. We have heard both sides and perused the appeal record. The fact that the Appellants have supplied the dutiable items for setting up of mega power projects has not been disputed. Certain conditions of claiming exemption is found to be wanting. We note that the first objection of the Revenue regarding the classification of the products is not relevant for exemption to excisable goods supplied to mega power projects as cross-reference has been made for the exemption of similar goods when imported into India in terms of Notification No. 21/2002-Cus. We also note that the project imports are specifically classifiable under Customs Tariff Heading No. 9801 and such Heading has no relevance to the domestically manufactured products. Similar issue came up earlier before the Tribunal on many occasions. We refer to one of the recent decisions in the case of **Cords Cable Industries Pvt. Ltd. vs CCE,**

Jaipur-I, 2016 (342) ELT 264 (Tri.-Del.), wherein the Tribunal has held as under :

> **"5. We find that in the same set of facts came up for decision before this Tribunal in earlier cases. In Sarita Steels and Industries Ltd. v. CCE vide Final Orders Nos. 1076-1081/2010, dated 15-7-2010 [2011 (264) E.L.T. 313 (Tribunal)], the Tribunal held that when the fact that supplies are made to mega power projects and all the conditions have been fulfilled the goods which are required for execution of mega power project are categorically exempted by the said customs notification. So in Om Metals SPML JV Unit 2 v. CCE & ST, Jaipur - 2013 (298) E.L.T. 79 (Tri.-Del.), the Tribunal held that there is no Heading 9801 in Central Excise Tariff which is only in Customs Tariff. The goods manufactured in India cannot be classified under 9801, accordingly, denial of exemption on that ground is not tenable. Further, the Tribunal in Paramount Communications Limited vide Final Order dated 23-6-2016 examined the very same issue and held the denial of exemption on the ground of classification shown under Customs Notification is 9801, is not sustainable. The same ratio has been followed by the Tribunal in KEI Industries Limited vide Final Order No. 52371/2016, dated 1-7-2016."**

4. Regarding the second issue with reference to condition no. 85(c), we note that the product is manufactured by the Appellants in India and supplied to mega power project. The said condition is applicable when the goods are imported into India. In such a situation, we find that there is no relevance of applying such condition to the domestically manufactured goods. Here we note that the original authority has discussed the applicability of condition at Serial No. 91B of Notification No. 06/2006-CE dated 01.03.2006 and held that the Appellants did not fulfil the condition. The Appellants categorically asserted that they never claimed exemption under that Serial No. The exemption claimed under

Notification is rightly availed as they have submitted the certificate as required under Condition No. 86 of Customs Notification.

5. Having gone through the facts of the case and legal provisions, as analysed above, we find no merit in the impugned order and consequently set aside the same.

6. In the result, the appeal is allowed.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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