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. III

DATE OF HEARING/DECISION : 24/04/2017.

Excise Appeal No. 1085 of 2012

[Arising out of the Order-in-Appeal No. 314 (AKJ) CE/JPR-I/2011 dated 01/02/2012 passed by The Commissioner (Appeals), Central Excise Commissionerate, Jaipur.]

M/s Om Metals Infraprojects Limited Appellant

Versus

CCE, Jaipur Respondent

Appearance

Shri Rahul Tangri, Consultant – for the appellant.

Shri M.R. Sharma, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 54245/2017 Dated : 24/04/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 01/02/2012 passed by the Commissioner, Customs & Central Excise (Appeals – I), Jaipur.

2. Brief facts of the case are that the appellant is engaged providing in the manufacture of Hydel gates and parts thereof falling under Chapter 73 of the Central Excise Tariff Act, 1985. During the period September 2009 to November 2009, the

appellant availed the benefit of duty exemption provided under Notification No. 6/2006-CE dated 01/03/2006 (Sl. No. 91), readwith Notification No. 21/2002-CUS dated 01/03/2002 (Sl. No. 400). The benefit under the said notification was claimed by the appellant on the ground that the goods were cleared to NTPC under International Competitive Bidding. However, the Department issued the show cause notice, denying exemption of notification dated 01/03/2006 readwith notification dated 01/03/2002 on the ground that the appellant had not fulfilled the conditions contained in Sl. No. 86 of the Customs Notification dated 01/03/2002. The matter was adjudicated against the appellant vide order dated 14/03/2011, wherein Rs. 1,21,322/- was confirmed as Central Excise duty and penalty of Rs. 25,000/- imposed on the appellant. On appeal, the Commissioner (Appeals) has upheld the adjudicated demand.

3. The learned Consultant appearing for the appellant submits that the condition No. 86 of notification No. 21/2002-CUS has been fulfilled in as much as the appellant has procured the certificate from Joint Secretary in the Ministry of Power. It is his further submission that sub-clause (3) in Condition No. 86 (a) was not available during the relevant time and the Commissioner (Appeals) has referred to the earlier notification to hold that the condition contained therein was not fulfilled by the appellant. The learned Consultant further submits that condition No. 86 (b) is not applicable in the case of the appellant in as much as the said conditions have the application only in case of import and not for

domestic manufacture of goods. To support such stand, the Consultant has relied on the decision of the Tribunal in **Kent Introl Pvt. Ltd. vs. CCE, Nashik** reported in **2014 (301) E.L.T. 84 (Tri. – Mumbai)** and affirmed by Hon'ble Bombay High Court in **2016 (331) E.L.T. 77 (Bom.)**. He further submits that learned Commissioner (Appeals) has also denied the benefit of exemption on the ground that the appellant was not registered under the project import classified under heading 9801. In this context, the submissions of the learned Consultant are that the said allegation has not been made in the show cause notice and thus the Commissioner (Appeals) has traveled beyond the scope of the notice. He also submits that for the purpose of the duty exemption provided in notification dated 01/03/2006, the registration of goods under the project import regulations is not required. The learned Consultant relied on the decision of the Tribunal in the case of appellant itself reported in **2013 (298) E.L.T. 79 (Tri. – Del.)**.

4. On the other hand, the learned AR appearing for the Revenue reiterates the findings in the impugned order.

5. We have heard both the sides and pursued the appeal records.

6. We find that the Commissioner (Appeals) has relied on condition No. (iii) in the Notification No. Sl. No. 86 (a) to hold that the appellant is not entitled for the exemption contained therein. However, on perusal of the said notification, we find that

during the material period clause (3) was not in existence, which was deleted vide Notification No. 49/2006 dated 26/05/2006. Further, we find that condition No. 86 (b) (entry No. 400) is required to be fulfilled in case of import of goods by the Central Public Sector Undertaking. The said condition does not have been any application with regard to manufacture of excisable goods within the factory. Thus, reliance placed by the learned Commissioner (Appeals) on the said condition in order to deny the benefit of exemption is not correct and proper. As regards non-registration under the project import regulation, we find that the Department had not proposed for the said aspect in the show cause notice. Further, the Tribunal in the case of appellant itself reported in **2013 (298) E.L.T. 79 (Tri. – Del.)** has also held that project import registration is not required for obtaining duty exemption contained in notification dated 01/03/2006.

7. In view of the foregoing discussion and analysis, we do not find any merits in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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