CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 19.07.2017

Appeal No. E/50959/2014-EX[DB]
[Arising out of the Order-in-Appeal No. 124(VC)CE/JPR-I/2013 dated 24.10.2013, passed by the Commissioner of Central Excise, New Delhi]

M/s. Bhoorathnam Construction Co. (P) Ltd. … Appellant

Vs.

C.C.E. Jaipur-I ... Respondent

Appearance:

Present Shri Kumar Vikram, Advocate for the appellant
Present Shri M.R. Sharma, DR for the respondent

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

FINAL ORDER No. 55623/2017

Per Justice (Dr.) Satish Chandra:

The present appeal has been filed against the order in appeal no. 124/2013 dated 24.10.2013. The period of dispute is 09.08.2004 to 31.12.2008.

2. The brief facts of the case are that during the period under consideration, appellant was engaged in the manufacture of PS CC Pipes and MS Specials falling under sub-heading 67089090 and 73071900 respectively of the Central Excise Tariff. They supplied these pipes for use in various water supply projects namely Water supply projects – Chandigarh, Water Supply Projects, Chambal, Dholpur, Bharatpur (Essar), Bisalpur Water Supply Scheme, Ajmer, Chru Bisan Water supply project,

Hanumangarh Sirmathura CWR project, Dholpur, and other places. The goods were supplied at nil rate of duty by claiming exemption under notification no. 06/06 dated 01.03.2006 (Sl. No. 7) which exempts pipes of any type needed for delivery of water from water sources for the water treatment plant and from the treatment plant to the storage facility, subject to condition that certificate from the District Collector regarding the use of the pipes for water supply project has been produced. In the instant case, the Department's view is that in respect of certain water supply projects where the appellant supplied the PSCC pipes and also MS Special, the District Collector's certificate does not mention MS Special. It is on this basis the Department has confirmed the demand of Rs.26,43,209/- against the appellant along with interest and penalty. In other words, duty demand has been confirmed on the ground that the MS Special supplied by availing the full duty exemption are not mentioned in the District Collector's certificate. Being aggrieved with the order, appellant has filed the present appeal.

3. With this background, we have heard Shri Kumar Vikram, Advocate for the appellant and Shri M.R. Sharma, DR for the respondent.

4. After hearing both the sides and on going through the material available on record, it appears that the main argument of the appellant that MS special are also a sort of pipe, though of smaller length and, therefore, the reference to the MS pipes in the District Collector's Certificate would also cover MS Specials.

On going through the record, we find that out of the 8 certificates in 4 certificates MS special has been mentioned. The Department has already granted exemption. When the exemption has been granted in 4 certificates it can be granted in the remaining 4 certificates also. It is not the case of the Department that MS Special were supplied somewhere other than projects in hand. The MS special are connected with the water pipes before they are used, sometimes as a bend to divert the flow. When the MS Specials were used in the project pertaining to the water supply then the same is allowable as Department has already allowed in 4 certificates. Hence, for technical mistake on the part of the appellant, we cannot deny the substantial justice.

5. Hence, we set aside the impugned order and allow the appeal with consequential relief. In the result, appeal filed by the appellant is allowed.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu