CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 50630 of 2017

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-16-17 dated 05.12.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Raipur**)**

DATE OF HEARING : 21.11.2017
DATE OF DECISION : 21.11.2017

M/s Vossloh Beekay Castings Ltd. …. Appellants
(Rep by Sh. Gaurav Sharma, Adv.)

VERSUS

CCE, Raipur …. Respondent
(Rep. by Sh H.C. Saini, DR)

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

FINAL ORDER NO. 58072/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. BHO-EXCUS-002-APP-16-17 dated 05.12.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Raipur. The period in dispute is March, 2013 to September, 2014.

2. The brief facts of the case are that, during the period under consideration, the assessee-Appellants were engaged in the

manufacture of articles of iron & steel which was subject to Central Excise Tariff Act, 1985. They were supplying the CMS crossings to the railway projects funded by the Asian Development Bank under the supervision of Rail Vikash Nigam Limited, Ministry of Railways. The assessee-Appellants have claimed the exemption under Notification No. 108/95-CE dated 28.08.1995, but the same was denied by the lower authorities by mentioning that the certificate was not countersigned by the Joint Secretary rank officer. The said certificate contains the name of the assessee-Appellants as manufacturer of the goods and also mentions that the items, as specified, were required for execution of the project concerned which was approved by the Government of India. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Shri Gaurav Sharma, learned counsel for the assessee-Appellants and Shri H.C. Saini, learned DR for the Department.

4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up before the Tribunal in the case of **S. Pal Enterprises Pvt. Ltd. vs CCE, Alwar,** Final Order No. 57340/2017 dated 20.10.2017, wherein it was observed that :

> **"3. The short issue involved in the present appeal is the denial of exemption for wires and cables cleared by the assessee-Appellants under Notification No. 108/95 dated 28.08.1995. The goods were cleared to IRPMU for use in Railway Sector Improvement Project which is funded by Asian Development Bank and assigned to Rail Vikas**

Nigam Limited for implementation. The Signal & Telecommunication portion of the said project is assigned to Indian Railway Project Management Unit. The Chief Project Manager of this Unit had certified the requirement of the impugned goods for implementation of the Project. It is also certified that the Chief Project Manager working in Railways is equivalent to the rank of Joint Secretary to the Government of India.

4. The Revenue entertained a view that there was no counter signature by the concerned Ministry. The proceedings initiated by the Department resulted in the confirmation of the demand amounting to Rs. 1,76,882/- with penalty of equal amount under Rule 25 of the Central Excise Rules, 2002 read with proviso to Section 11AC of the Central Excise Act, 1944.

5. The learned counsel appearing for the assessee-Appellants submitted that, since the project is implemented by the Ministry of Railway's project office, they have cleared the goods on the strength of the certificate issued by the Chief Project Officer, who is of the rank of Joint Secretary to the Government of India in the Ministry of Railways. The clearance without payment of duty has been reflected in the monthly statutory return ER-1. The requirement of counter signature by the Ministry was examined by the audit much later. He submitted that they have acted in bonafide manner based on the certificate issued by an Officer of the Indian Railway and cannot be alleged to have acted with an intention to evade payment of duty with an element of fraud, suppression etc.

6. The learned DR for the Revenue submitted that the requirement of the Notification (supra) is very clear and various authorities are mentioned therein to certify the eligibility of the exemption. Such violation of condition will necessarily result in the demand and penal action.

7. We have heard both sides and perused the material available on record. We note that the instant case is based only on certificate issued by the Chief Project Manager of Indian Railway Project Management Unit, New Delhi. The supply of goods without payment of duty was made. The Notification stipulates that the certificate should be issued by the Project Implementation authority

> **and counter signed by an Officer not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry. We note that the project is for Indian Railways. The certificate is issued only by Chief of Project Manager in the Indian Railways. It is not coming out clearly in the impugned order, whether there is any other Line Ministry supervising this project which is a railway project. In any case, without further examining the merits of the case, we note that there is no sustainable ground to invoke fraud, suppression or wilful mis-statement in the facts of the present case. The clearance of goods is without payment of duty claiming Notification No. 108/95 has been reflected in the monthly statutory return and the clearance is based on the certificate issued by the Railway authorities. In such circumstances, it is not correct to invoke the extended period of demand and impose penalty. On this ground alone, the impugned order is set aside and the appeal is allowed."**

5. By following our earlier decision (supra) and considering the totality of the facts and circumstances of the case, we set aside the impugned order and allow the appeal.

6. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

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(V. PADMANABHAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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