IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH, NEW DELHI

Date of hearing / decision: 29.06.2018

Appeal No. E/51390-51391/2017-EX[DB]

[Arising out of Order-in-Appeal No. 127-128-CE/APPL-I/DLH-II/2016/877 dated 27.03.2017 passed by Commissioner (Appeals), Central Excise, Delhi]

M/s Special Cable (P) Ltd and other … Appellant

Vs.

CCE, Delhi-II … Respondent

Appearance:

Present for the Appellant : Shri G.K. Sarkar, Advocate

Present for the Respondent : Shri S.K. Bansal, AR

Coram:

Hon'ble Mr. Anil Chaudhary, Member (Judicial)

Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 52700-52701/2018

Per Bijay Kumar

The present appeal has been filed against the impugned order in which the learned Adjudicating Authority has upheld the order passed by the lower authority.

2. The issue involved in this case is regarding the benefit of Notification No. 15/2010 dated 26.02.2010. In this case, the impugned notification admittedly permits clearance of the goods

required for Ministry of New and Renewable Energy. The notification imposed the following conditions:

“(i) before the clearance of the goods from the factory, the manufacturer produces to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise as the case may be, a certificate, from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of New and Renewable Energy recommending the grant of this exemption and the said officer certificate that the goods are required for initial setting up of a solar power generation project or facility; and

(ii) the manufacturer of such goods furnishes an undertaking 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-

(a) the said goods shall be used only in the said project or facility and not for any other use; and

(b) ***in the event of failure to observe conditions above, the manufacturer shall pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.****”*

3. As the manufacturer could not produce this certificate, the Revenue was of the view that the benefit is not available to them.

4. On the factual matrix, we heard the authorities and perused the records.

5. Learned Advocate has drawn our attention towards amendment of the Notification No. 15/2010 by Notification No. 26/2012 dated 08.05.2012. The condition of the initial Notification, that is, Notification No. 15/2010, had been modified as under:

> *"(1) an officer not below the rank of a Deputy Secretary to the Government of India, in the Ministry of New and Renewable Energy recommends the grant of this exemption, indicating the quantity, description and specification thereof and certifies that the goods are required for initial setting up of a solar power generation project or facility; and*
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> *(2) the Chief Executive Officer of the project furnishes an undertaking to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory of the manufacturer, to the effect that-*
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> > *(i) the said goods will be used only in the said project and not for any other use; and*

> *(ii) in the event of non-compliance of sub-clause (i), the Project Developer of such project shall pay the duty which would have been leviable at the time of clearance of goods, but for this exemption.”*

6. This notification has been issued in order to remove the difficulties in meeting out the condition in previous notification which was impossible to be by the manufacturer.

7. Further, we also feel that the subsequent notification is clarificatory in nature and, therefore, has to be given retrospective effect thereto. Learned DR submitted that during the impugned period, the subsequent Notification No. 26/2012 dated 08.05.2012 was not available and the clearance fact by the Appellant is to be guided by the previous notification, i.e., Notification No. 15/2010, and, therefore, he contends that the impugned order will suffer from any infirmity in facts and circumstance of the case.

8. We have considered the rival submission and perused the appeal records. After going through the records we are of the view that the earlier notification has been modified by the subsequent notification, which is beneficial in nature and, therefore, it has to be given retrospective effect in view of the various judicial pronouncements.

9. Accordingly, we allow the appeal.

10. In the connected appeal, we find that N.K. Khanna, Director, has been penalized under Rule 26 of the Central Excise Rules. As we have considered the appeal on merits and allowed, the benefit of the penalty on the Director is also set aside accordingly.

[Order dictated in open court]

(Bijay Kumar) Member (Technical)	(Anil Chaudhary) Member (Judicial)

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