CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No.E/652/2009

(Arising out of Order-in-Appeal No.08/2009 (T) CE, dt.30.03.2009 passed by Commissioner, Customs & C.Ex., (Appeals), Guntur)

CCE & ST, Tirupati …. Appellant(s)

VS.

Lanco Industries Ltd ….. Respondent(s)

Appearance

Shri P.S.Reddy, Asst. Commissioner/AR for the Appellant.
Ms. A.S.K.Swetha, Advocate for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 06.06.2018
Date of Decision: 06.06.2018

FINAL ORDER No. A/30702/2018

[Order per: M.V. Ravindran]

1. This appeal is filed by the Revenue against Order-in-Appeal No.08/2009 (T) CE, dated 30.03.2009.

2. The relevant facts that arise for consideration, after filtering out unnecessary details are, during the period March, 2007 to November, 2008, appellants cleared pipes of various dimensions to various projects claiming exemption under Notification No.6/2002 dated 01.03.2002 as amended

from time to time for the respective periods. It is the case of the Revenue in the show cause notice that the exemption claimed by the appellant based upon the certificate issued by the certifying authority does not clearly indicate that requisite conditions as stipulated in the board circular dated 28.10.2005 are complied with and the pipes are not used for setting up of water treatment plant but used for distribution of water beyond first storage point. The adjudicating authority after following due process of law did not agree with the contentions of the appellant and confirmed the demands raised. Aggrieved by such order, an appeal was preferred to the first appellate authority. The first appellate authority after extracting the table to concerned Notification No.6/2002-CE (as amended) and applicable for the period in question held that appellants are eligible to avail the exemption under Notification No.6/2007-CE dated 01.03.2007 (amending notification). To come to such conclusion, he relied upon his own decision in the case of Nandini Polymers India Pvt Ltd, Tirupati and also the decision of the Tribunal in the case of IVRCL Infrastructures and Projects' Final Order No.1431 & 1432/2008 dated 24.12.2008. He set aside the Order-in-Original, hence this appeal.

3. Learned Departmental Representative while reiterating the grounds of appeal, submits that the first appellate authority has erred in coming to conclusion that the pipes which were supplied claiming exemption were covered under the notification. He would submit that lower authorities had sought clarification from the respondent on the point and directed the respondent to give the declaration of the project authority, route diagrams,

project report, etc., It is his submission that benefit of Notification No.6/2007 will not be applicable in the case in hand as the Respondents cleared the pipes not for use of the same for delivery of water from its source to the plant and from there to first storage point, for the distribution of water and in the absence of any clear indications on the certificate that the said pipes are to be used as per notification, the first appellate authority was in error in setting aside the Order-in-Original.

4. Learned Counsel after taking the Bench through the facts of the case submits that the Respondents are manufacturers of ductile iron spun pipes and cleared the same during the relevant period in question by availing benefit of Exemption Notification No.6/2002, as amended by No.6/2006 and 6/2007. It is her submission that pipes which are cleared by the Respondent are of outer diameter exceeding 20 cms and are used as integral part of the water supply project as per the certificate issued by the Collectors of various Districts to whom the supplies were affected. She draws out attention to the said certificates. These are submissions that the issue is no more res integra as Tribunal in various decisions on an identical issue held in favour of the assessee. She cites the following case laws:

(1) Chemplast Senmar Ltd [2018 (5) TMI 1455 (CESTAT-Chennai)]

(2) Indian Hume Pipe Co Ltd [2016 (11) TMI 1436 (CESTAT-Chennai)]

(3) Jain Irrigation Systems Ltd [2017 (3) TMI 990 (CESTAT-Mumbai)]

(4) P & C Constructions Pvt Ltd [2017 (8) TMI 1045 (CESTAT-Chennai)]

5. It is her submission that since the issue is settled by the Tribunal, the impugned Order may be upheld.

6. On careful consideration of submissions made, we find that the issue is not in dispute i.e., during the relevant period various sizes of pipes were cleared by claiming exemption under Notification No.6/2002-CE (as amended) and Notification Nos.6/2006 and 6/2007. The said notification grants exemption from payment of proper duty on the pipes which are needed for delivery of water from its source to the plant and from there to first storage point and pipes of outer diameter exceeding 20 cms when such pipes are integral part of the water supply projects. The condition attached to such exemption is that the assessee needs to produce certificate issued by the Collector/District Magistrate/Deputy Commissioner of District in which the plant is located and is produced before the lower authorities and the said certificate also indicate that goods are cleared for intended use in specified column (3) of the notification.

7. Learned Counsel for the respondent brought to our notice, the certificates issued by the various District Collectors, in respect of the pipes supplied by the respondent. On perusal of said certificates, we find that the said certificates clearly indicated that they were issued as required under Notification No.6/2006 dated 01.03.2006 and/or Notification No.6/2007 dated 01.03.2007. The first appellate authority has recorded the clear factual finding on this point. We find that the said factual findings are not effectively controverted by the Revenue in their grounds of appeal.

8. We also find strong force in the contentions raised by the Learned Counsel for respondent that the issue is now clearly settled by the various case laws cited by her. We find merits in such submissions.

9. Accordingly, in view of the foregoing, we hold that the impugned order is correct and legal and does not suffer from any infirmity. The impugned order is upheld and the appeal stands rejected.

(Operative part of this order was pronounced
on conclusion of hearing)

(P.VENKATA SUBBA RAO) MEMBER (TECHNICAL)	(M.V. RAVINDRAN) MEMBER (JUDICIAL)

Veda