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

Appeal No. E/114/2009

(Arising out of Order-in-Original No.03/2008-C.Ex., dt.17.11.2008 passed by CCCE & ST, Hyderabad - II)

Indian Hume Pipe Co. Ltd ….. Appellant(s)

Vs.

CCCE & ST, Hyderabad - II ….. Respondent(s)

Appearance

Shri R. Sudhinder, Advocate for the Appellant.

Shri Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

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

Date of Hearing: 08.08.2018
Date of Decision: 08.08.2018

FINAL ORDER No. A/30910/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against the Order-in-Original No. 03/2008-C.Ex., dated 17.11.2008.

2. The relevant facts that arise for consideration after filtering out unnecessary details are, the appellant herein is manufacturer of PSC pipes of various sizes, during the period 14.05.2005 to 02.06.2006, had cleared these pipes to a drinking water project of Sri Satya Sai Central Trust at East

and West Godavari Districts. The appellant availed duty exemption under notification 06/2002-CE dated 01.03.2002 as amended. The case of the revenue in the show cause notice is that the benefit of said notification is not applicable for the pipes supplied by the appellant from the water storage to further distribution and exemption can be granted only for delivery of untreated water from its source to water treatment plant and from there to first storage point. Appellant contested the show cause notice on merits pointing out that the entire project is for the drinking water supply project and hence, covered by the notification and certificate issued by the Collector and District Magistrate indicate so. The adjudicating authority, after following due process of law, rejected the contentions made by the appellant and confirmed the demands on the grounds that the pipes were used beyond the first storage point and Board Circular No.354/129/2005-TRU dated 28.10.2005 which clarified that it would be available only to the first storage facility. The adjudicating authority also recorded the finding that the Collector of East and West Godavari Districts of Andhra Pradesh had certified that pipes which are required for water supply project are of 450mm and 500mm diameter, while, the appellants have also supplied PSC pipes of 470mm and 520 mm diameter which are not eligible for exemption, as not covered by the certificate. Learned Counsel submits that the issue is now settled by the decision of Tribunal in their own case as reported at [2012-280-ELT-552] and produced a copy of the same. He also submits similar view has been taken by the Tribunal in the case of CCEC & ST, Hyderabad Vs IVRCL Infrastructures and Projects Ltd [2009-240-ELT-A-134].

3. Learned departmental representative draws our attention to the certificates issued by the Collector and submits that these certificates are

only in regard to the PSC pipes of 450 & 500mm diameter and appellant had supplied pipes which are of 470 & 520mm diameter also. He would submit that the Board Circular dated 28.10.2005 is very clear as to that pipes which are used for transportation of water beyond first storage point are ineligible for exemption under Notification No.06/2002 as amended.

4. We have considered the submissions made by both sides and perused the records.

5. On perusal of records, we find that the appellant herein had supplied pipes of 450mm to520mm diameter to various water supply projects undertaken by the State Government. The certificates issued by the District Collector indicates that Sri Satya Sai Central Trust to whom the project was granted needs to supply 450 and 500mm diameter PSC pipes also.

6. It is seen from the records that appellant had been supplying different sizes of PSC pipes for the said project. As regards the pipes which are used for execution of such project beyond the first storage point, the exemption for which is sought to be denied, we find that this Tribunal in the appellant's own case (supra) has clearly held that pipes which are supplied for water supply project and certified as being required for such project by the Collector of District, exemption under notification 06/2002 is to be extended and the same cannot be denied. This is the ratio of the judgment of the Tribunal in the case of IVRCL Infrastructures and Projects Ltd (supra) and upheld by the Apex Court. The same view has been taken by the Tribunal in the case of Lanco Industries Ltd [2010-253-ELT-70]. In view of the various judicial pronouncements as cited herein above, we hold that the demand raised on the appellant on the pipes of 450 and 500mm diameter cannot be

upheld and they need to be set aside and we do so. The impugned order to the extent it confirms the demand on this issue is set aside, so also the interest liability and penalty.

7. As regards the denial of exemption for the pipes of 470 and 520mm diameter, as being not covered by the certificate issued, we find that the adjudicating authority has not recorded any findings. The claim of the appellant before the adjudicating authority was that these pipes are used for water supply project is to be considered while concluding the benefit of exemption on 470 & 520mm diameter pipes, in our view that contention merits acceptance; adjudicating authority having not recorded any findings or reasoning for denial of exemption to appellant on this point in our view, this particular point needs reconsideration by the adjudicating authority. Keeping the issue open in respect of eligibility of exemption to 470mm and 520mm diameter pipes, we remit the matter back to the adjudicating authority only for this purpose with direction to decide the issue after following principles of natural justice. Appellant is at liberty to produce any documents on which he wishes to rely upon.

8. The appeal is disposed of as indicated herein above.

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

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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