CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

DIVISION BENCH – COURT NO. 1

Excise APPEAL No. 1835 of 2011

(Arising out of **Order-in-Appeal** No10/2011 (G) CE, dated 11.05.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

VIJAYA FERLLOYS .. **APPELLANT**
ENIKEPADU,
Ramavarappadu,
VIJAYAWADA – 521 108.
Andhra Pradesh

VERSUS

Commissioner of Customs,
Central Excise & Service Tax, .. **RESPONDENT**
P.B.No. 331, C.R. Building,
Kannavari Thota,
GUNTUR – 522 004.
Andhra Pradesh

Appearance
None for the appellant
Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram: Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30464/2019

Date of Hearing: 09.04.2019
Date of Decision:09.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

1. After hearing Ld. DR and perusing the records, it emerges that the appellant herein are manufacturers of Cast Iron Pipes, Cast Iron Fittings and

Cast Iron Scrap and have been paying Central Excise duty. The issue for consideration is whether the cast iron fittings manufactured by the appellant are eligible for exemption under notification No. 06/2006-CE, dated 01.03.2006 as amended. It is the case of the Revenue that the appellant is not entitled to the benefit of this notification insofar as the cast iron fittings are concerned since the notification specifically covers only pipes needed for delivery of water and did not include the fittings. The relevant portion of the notification at Sl.No. 7 is as follows:

Sl.No.	**Chapter or heading or subheading or tariff item of the First Schedule**	**Description of Excisable goods**	**Rate**	**Condition No.**
7.	84 or any other Chapter	The following goods, namely- (1) All items of machinery, including instruments, apparatus and appliances, auxiliary equipment and their components/parts required for setting up of water treatment plants (2) Pipes needed for delivery of water from its source to the plant and from there to the storage facility. *Explanation*- For the purpose of this exemption, water treatment plants includes a plant for desalination demineralization or purification of water or fot carrying out any similar process or processes intended to make the water fit for human or animal consumption, but does not include a plant supplying water for industrial purposes.	Nil	4

2. It is the case of the appellant that the notification also exempts cast iron fittings because the fittings should be considered as part of pipes only and has been held by Hon'ble Supreme Court in the case of Bharat Forge & Press Industries (P) Limited [1990(45)ELT 525 (SC)] in which Hon'ble Apex Court held that the pipe and pipe fittings should be considered as the same.

Ld. Counsel submits that the ratio of this judgment of Hon'ble Apex Court applies squarely to their case and therefore they are eligible for the exemption notification. The show cause notice proposing to recover the Central Excise Duty of Rs. 7,51,185/- (including CESS) for the period December 2008 to March 2009 under section 11A along with interest under section 11AB is not sustainable. He further submits that for the same reason, the penalty under section 11 AC of Central Excise Act, 1944 and penalty under Rule 25 of Central Excise Rules 2002 are also not sustainable. In view of the above, the order of the lower authority confirming the demand along with interest and imposing penalty under section 11AC and the impugned order passed by the first appellate authority holding that they are not eligible for exemption notification 06/2006-CE, dated 01.03.2006 are not sustainable and need to be set aside.

3. Ld. DR reiterates the findings of the impugned order and submits that the judgment of Hon'ble Apex Court in the case of Bharat Forge & Press Industries (P) Limited was delivered in the context of erstwhile tariff wherein tariff item 26AA (iv) covered both pipes and pipe fittings and hence the Hon'ble Apex Court held that they are one and the same. This does not apply in the context of the new tariff. This has been clarified by CBEC in circular No. 891/11/2009-CX, dated 15.06.2009. Accordingly, the impugned order is correct and requires no interference. He further argues that the exemption notification being an exception to the general rule should be strictly construed and any benefit of doubt must be given in favour of the Revenue and against the person claiming exemption notification as has been held by the constitutional Bench of Hon'ble Apex Court in the case of Dilip Kumar (in Civil Appeal no. 3327/2007).

4. We have considered the arguments on both sides and find that the short point to be decided is whether the appellant is entitled to the benefit of the exemption notification No. 06/2006-CE, dated 01.03.2006 in case of pipe fittings manufactured and supplied by them. It is not in dispute that the remaining conditions specified in the notification are fulfilled. The first appellate authority, in the impugned order, modified the order of the lower authority to the extent that CI pipes with 20 cm diameter in respect of which there was a dispute, are eligible for exemption notification No. 06/2006-CE, dated 01.03.2006 but pipe fittings are not eligible for exemption notification No. 06/2006-CE, dated 01.03.2006 as amended.

5. Revenue is not in appeal against the relief given by the first appellate authority in respect of the pipes of 20 cm diameter. The only question to be decided is whether the benefit of this exemption notification can also be extended to pipe fittings which are not explicitly covered under Sl.No. 7 of notification No. 06/2006-CE, dated 01.03.2006. The appellant's contention is that they are eligible for the exemption notification because the Supreme Court has held that pipes and pipe fittings are one and the same, in the case of Bharat Forge & Press Industries (P) Limited (supra). We find that the particular judgment was issued in the context of the classification of pipes and pipe fittings under the erstwhile tariff before the introduction of the new Central Excise Tariff based on HSN. It is not issued in the context of eligibility of exemption notification in question. The present case is with respect to the eligibility of exemption notification which explicitly does not cover the pipe fittings. Therefore, no benefit can be extended to the pipe fittings in the absence of an exemption notification, in view of the strict interpretation of exemption notification as decided by the constitutional Bench of Hon'ble Apex Court. Even if it is held, for the sake of argument, that two views are possible with respect to the exemption notification, the one in favour of Revenue and against the assessee has to be taken as per the judgment of Hon'ble Supreme Court in the case of Dilip Kumar (in Civil Appeal no. 3327/2007).

6. In view of the above, we find that the appellant assessee is not eligible for the benefit of exemption notification. Accordingly the appeal is dismissed and the impugned order is upheld.

((Operative portion of the order pronounced in open court on conclusion of hearing)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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