IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

E/MA/77022-77023/2018
And
Appeal Nos. E/85, 302/2009

Arising out of Order-in-Original No. 10-11/Commr/BOL/08 dated 03.11.2008 (ii) O/O No. 36/Commr/BOL/09 dated18.02.2009 passed by the Commissioner of Central Excise, Bolpur.

M/s G. E. Power India Limited
(Formerly known as M/s Alstom Projects India Limited)
….Appellant (s)

Vs.

Commissioner of Central Excise, Bolpur

….Respondent (s)

Appearance:
Shri Ravi Raghavan, Advocate & Shri Rishi Raju, Advocate for the Appellant (s)
Shri A. Roy, Suptd. Suptd. (AR) for the Respondent(s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, MEMBER (JUDICIAL
HON'BLE SHRI BIJAY KUMAR, MEMBER (TECHNICAL)

Date of Hearing/Decision: - 18.09.2018

ORDER No. MO/76083-76084/2018 & FO/A/77259-77260/2018

Per Bench:

The appellant has filed miscellaneous applications seeking change of cause title due to change in the name of the company. We allow the Miscellaneous Applications for change of cause title based on the records as filed by the appellant.

2. The Present two appeals are filed against 2 separate Orders-in-Original covering two different periods having the common issue.

Hence, both the appeals are taken up for hearing together and disposed by this common order.

The details of the two appeals are given in table below:-

Appeal No.	**Appeal No. E/85/2009**	**Appeal No. E/302/2009**
Period of demand	March 2006 to February 2007	March 2007 to May 2007
Demand confirmed	Rs.2,42,51,622/-	Rs.86.57,991/-
Order-in-Original No./date	Order-in-Original No. 10-11Commr/BOL/08 dated 03.11.2008	Order-in-Original No. 36.Commr/BOL/09 dated 18.02.2009
Show Cause Notice No./date	SCN No. 1/Bol/Commr/07 dated 19.02.2007	SCN No. 19/Bol/Commr/08 dated 11.03.2008
	SCN No. 15/Bol/Commr/07 dated 10.07.2007	

3. Briefly staged the facts of the case are that the appellant is engaged in the manufacture of boiler and boiler parts classifiable under Chapter 84 of the Central Excise Tariff Act. The appellant have cleared the goods on payment of duty as also cleared the goods without payment of duty to projects funded by International Competitive Bidding.

The issue involved in the two appeals are regarding admissibility of exemption under Notification No. 6/2002-CE dated 01.03.2002 as amended vide Notification No. 48/2004-CE dated 10.09.2004 (Sl. No. 301) and its successor notifications for removal of excisable goods without payment of duty. The appellants have cleared the goods without payment of duty in terms of the said notification for setting up of Mega Power against International Competitive Bidding (ICB). It is seen from the records that the goods were cleared to the 1000MW Power project of Jindal Power Limited at Raigarh which had awarded the contract to BHEL.

The Department has contended that the Appellant did not participate in the International Competitive Bidding Process hence, they are not entitled for the benefit of the exemption under Notification No. 6/2002-CE as amended by Notification No. 48/2004-CE. Proceedings were initiated against the appellant by various Show Cause Notices covering different periods proposing to deny exemption on the above ground and to demand differential duty on the clearances made.

The Commissioner while adjudicating the Show Cause Notices by 2 separate orders covering different periods has confirmed the duty demand. The main finding given by the Commissioner as evident from the impugned orders is that the appellant being the supplier of the goods to Jindal Power Limited, the recipient of the goods, having not participated in International Competitive Bidding, is not eligible for the exemption. The Commissioner has held that the notification does not mention that the supply of goods against ICB by a sub-contractor is eligible. Hence, the present appeals before the Tribunal.

4. Heard Shri Ravi Raghavan, the Ld. Counsel for appellant and the Shri Anirudha Roy Ld. Authorized Representative for the department.

5. The Ld. Counsel for the appellant submits that the Notification does not stipulate that the supplier of the goods should participate in the international competitive bidding procedure. The Notification only

stipulates that the excisable goods are supplied against an ICB and the goods are exempt from customs duty and additional duty in terms of the Customs Tariff Act. There is absolutely no need that the Apellant themselves should have been the bidder in ICB for the mega power project.

It is submitted that in terms of the Notification No. 6/2002-CE as amended vide Notification No. 48/2004-CE, it is not necessary that the manufacturer supplying the goods to the mega power projects, should have participated in International Competitive Bidding. The Ld. Advocate contends that so long as the goods are supplied against such contract, where the contract was awarded to a person who took part in the International Competitive Bidding, and it is proved that the goods were in fact supplied to such power project and the equipment were installed at the project site the admissibility of the exemption notification cannot be denied.

06. The Ld. Counsel further submits that in the present case, it is an undisputed fact that Bharat Heavy Electricals Ltd. (BHEL) have participated in the ICB and have entered into an agreement with M/s. Jindal Power Ltd. (Project Authority) for setting up of the 1000MW Raigarh Thermal Power Project in Chhattisgarh which has received the status of Mega Power Project from the Joint Secretary of the Ministry of Power. BHEL had sub-contracted the Appellant for the supply of boilers and parts for setting up of the plant.

The Ld. Counsel relied on the decision of the Tribunal in the case of M/s. Toshniwal Indus Pvt. Ltd. Vs. Commissioner of Central Excise, 2017 (5) G.S.T.L. 179 (Tri.-Del.), wherein the issue regarding claim of benefit under Notification No. 6/2002-CE for the removal of manufactured goods to a mega power project, was allowed even though they were sub-contractors and had not participated in the ICB. It was held that since the goods were sent by the assessee to the bidders of the ICB, the condition of the Notification is satisfied and there would be no justification for denying the exemption notification.

The appellant also relied on the following cases wherein a similar view was taken.

(i) GEI Industrial Systems Ltd. Vs. Commissioner of Central Excise, 2017-TIOL-1470-CESTAT-DEL.

(ii) Unique Industrial handlers Pvt. Ltd. Vs. Commissiioner of Central Excise, [2016 (333) ELT 311 (Tri.-Mum.)].

(iii)CST Ltd. Vs. Commissioner of Customs & Central Excise, [2007 (217) ELT 513 (Tri.-Bang.)].

(iv) Sarita Steels & Industries Vs. Commissiner of Central Excise, [2011 (264) ELT 313 (Tri-Bang.)].

7. The Ld. Authorized Representative for the department reiterates the findings given in the impugned orders and contends that the appellant are not eligible for the exemption.

8. We have considered the submissions made by both sides and perused the appeal records and the findings given by the Commissioner in the impugned orders. The main reason for denial of the benefit of the exemption is that the appellant had not directly participated in the International Competitive Bidding. The Commissioner while interpreting the notification has held that the benefit will be available only for the persons who had directly entered into the bidding process.

We find that the Notification only stipulates that the excisable goods supplied against an ICB are eligible from payment of duty. In our view there is no condition stipulated in the notification that the person claiming benefit for the goods cleared should have been the bidder in ICB for the mega power project. In our view so long as the goods are supplied to such contract awarded to a person who took part in the International Competitive Bidding, the benefit is not deniable.

9. We further note from the records that Bharat Heavy Electricals Ltd. (BHEL) had participated in the ICB and entered into an agreement with M/s. Jindal Power Ltd. (Project Authority) for setting up of the 1000MW Raigarh Thermal Power Project in Chhattisgarh. This project received the status of Mega Power Project from the Joint Secretary of the Ministry of Power. BHEL had sub-contracted the Appellant for the supply of boilers and parts for setting up of the plant. The Project Authority Certificate also clearly recognized the Appellant as one of the sub-contractors for the supply of boilers and parts for the aforesaid project.

We find that the Tribunal under similar circumstances, in the case of M/s Toshniwal Indus Pvt. Ltd. Vs. Commissioner of Central Excise, 2017 (5) GSTL 179 (Tri.-Del.), had decided the issue rejecting a similar contention raised by the department as in the present case. The Tribunal held as under:-

> "***6.****After hearing both sides and on perusal of record, it appears that the Tribunal has decided (supra) that it is not necessary that the manufacturer supplying the goods to the mega power projects should have participated in International Competitive*

> *Bidding so long as the goods are supplied to such contract was awarded to a person who took part in the International Competitive Bidding and it is proved that the goods were in fact supplied to such power project and the equipments were installed at the project site. What we noticed is that neither the benefits under Notification No. 21/2002-Cus. (Sr. No. 400) nor the exemption under Notification No. 6/2006-C.E. (Sr. No. 91) is subject to any conditions stipulated in Foreign Trade Policy. BHEL as the main contractor could have imported the impugned goods without payment of Customs duty in view of Notification No. 21/2002-Cus. (Sr. No. 400). Notification No. 6/2006-C.E. Sr. No. 91 only makes it possible to procure such goods locally without payment of excise duty if BHEL so desires and BHEL opted for local procurement from the assessee-appellants. So, naturally the assessee-appellants should be eligible for exemption under Notification No. 6/2006-C.E. (Sr. No. 91). Prima facie, the deemed export benefits dealt within para 8.6.1 and 8.6.2 deal with incentive granted by DGFT and not exemption granted by Ministry of Finance and there is no reason to refer to those conditions so long as they are not referred to in the Notification claimed. The main point to be noticed is that relief from excise duty is not granted through the mechanism of deemed export but administered through exemption notification issued. We note that Revenue has not made any case that any of the conditions specified in the exemption notification is not fulfilled. It is already decided by the Tribunal (supra) that exemption cannot be denied for the reason that sub-contractor did not take part in International Competitive Bidding.*
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> ***7.**In view of the above discussion, we set aside the impugned order and allow the appeal."*

10. Similar view has also been taken by the Tribunal in the following cases:-

(i)CST Ltd. Vs. Commissioner of Customs & Central Excise, [2007 (217) ELT 513 (Tri.-Bang.)].

(ii) Sarita Steels & Industries Vs. Commissiner of Central Excise, [2011 (264) ELT 313 (Tri-Bang.)].

11. In the light of the above decisions, it is our considered view that the Appellant is entitled to avail benefit of Notification No. 6/2002-CE as amended vide Notification No. 48/2004-CE and its successor notification No. 6/2006-CE. Hence, the demand confirmed by the Commissioner in the impugned orders is not sustainable and is liable to be set aside. By following the ratio laid down in the above decisions, we set aside the impugned orders and allow the appeals filed by the appellant with consequential relief, if any. The Miscellaneous Applications filed for change of cause title are also disposed of.

(Dictated and pronounced in the open court.)

(Bijay Kumar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.