

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Ex.Appeal No.78316 of 2018

(Arising out of Order-in-Appeal No.68/Kol.III/2018 dated 17.05.2018 passed by Commr. of CGST & Excise (Appeal IO, Kolkata)

M/s Rabi Engineering Works Pvt. Ltd.

327, R. N.Guha Road,
Dum Dum,
Kolkata - 700028

Applicant (s)

VERSUS

CGST & Excise, Kolkata North

180, Shanti Pally,
Rajdanga Main Road,
Kolkata-700107

Respondent (s)

APPEARANCE :

Shri N. K. Chowdhury, Advocate for the Appellant

Shri S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

**HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.V. PADMANABHAN, MEMBER (TECHNICAL)**

FINAL ORDER NO.75423 / 2019

DATE OF HEARING : 10.04.2019

DATE OF DECISION : 10.04.2019

PER V.PADMANABHAN :

The present appeal is against the Order-in-Appeal No.68/Kol.III/2018 dated 17.05.2018.

2.1 The appellant supplied various goods to Essar Power Gujarat Limited, Salaya Power Plant of 1200 MW capacity (2 X 600 MW) by availing the benefit of exemption under Notification No.6/2006-CE dated 01.03.2006 as amended. The Notification provides exemption for goods supplied against International Competitive Bidding as mentioned in

Sl.No.91. The benefit is further subject to the condition No.19 to the effect that the benefit will be available if the goods are exempted from duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1995 as well as the Additional Duty under Section 3 of the Act, when imported into India.

2.2 The appellant supplied the goods on the basis of Certificate issued to them. There is no dispute that the Certificate covers the goods under supply and is issued by the authorities specified within the Notification. Revenue still objected to the claim of the benefit under the said Notification for the reason that the goods were supplied to a power project which had two power plants of 600 MW capacity each. The lower authorities took the view that the benefit cannot be extended since the Notification extends the benefit only for a single power plant having capacity 1000 MW or more. The order passed by the Commissioner (Appeals) denying the benefit of Notification is challenged in the present appeal.

3.1 The case of the appellant is argued by Shri N. K. Chowdhury, Id. Advocate. He submits that Essar Power Gujarat Limited, Salaya Power Plant had the status of Mega Power Project inasmuch as the capacity of power plant was 1200 MW. He submits that the Certificate issued by the Ministry of Power, Government of India, grants the Status of Mega Power Project certifying the capacity as 1200 MW. Hence, he submits that the benefit cannot be denied to the appellant. He submits that the Notification No.6/2006-CE dated 01.03.2006, was succeeded by Notification No.12/2012-CE dated 17.03.2012, which had similar wordings. This Notification was further amended by Notification No.34/2002-CE dated 10.09.2012. The amendment has clarified the capacity of Eassar Power Gujarat Limited, Salaya Power Plant to be 1200 MW.

3.2 He also submits that the present issue stands decided in favour of the appellant by the decision of the Delhi Bench of the Tribunal in the case of Crompton Greaves Limited Vs. Commr. of Central Excise, Indore reported in 2015 (317) ELT 735 (Tri.-Del.). The Tribunal considered the identical dispute and held that the benefit cannot be denied as long as

the combined generation capacity of the power plant was in excess of 1000 MW.

4. The Id.D.R. appearing on behalf of the Revenue, justified the view taken by the lower authorities.

5. Heard both sides and perused the records.

6. The limited dispute in the present case is whether the appellant will be entitled to the benefit of exemption under Notification No.06/2006-CE dated 01.03.2006. There is no dispute that the appellant has satisfied all the eligibility conditions, such as, the goods covered by the Certificate issued by the authorities specified within the Notification. The only objection of the Revenue is that the goods were supplied to a projects comprising two Power Plants of 600 MW capacity each. But we find that combined capacity of the power plant at Salaya implemented by Essar Power Gujarat Limited, was 1200 MW. To this effect, the Certificate issued by the Ministry of Power dated 08.02.2010, has certified as follows :

“Certified that the Salaya Power Project being set up at Jamnagar, Gujarat by M/s Essar Power Gujarat Limited is a thermal power plant of capacity of 1200 MW.”

7. We further note that similar dispute has been decided in favour of the assessee by the Delhi Bench of the Tribunal in the case of Crompton Greaves Ltd. (supra). The Tribunal observed as follows :

“3. Duty exemption is provided by Notification No. 6/2006-C.E., dated 1-3-2006 from duties of Customs and the additional duty leviable under the First Schedule of the Customs Tariff Act, 1975 and Section 3 of the Customs Act, 1962, respectively, in respect of goods imported into India which are required for setting up any Mega Power Project i.e. an interstate thermal power plant of a capacity of 1000 MW or more or an interstate hydel power plant of a capacity of 500 MW, subject inter alia to condition No. 86 of the Notification; namely if an officer not below the rank of Joint Secretary to the Govt. of India in the Ministry of Power issues the necessary certificate.

4. The assessee cleared the goods meant for power plants whose combined production capacity was in excess of 1000 MW but comprised of units producing power of different capacities, of 250 to 500 MWs, as the case may be. The adjudication orders concluded that a single unit manufacturing 1000 MW would alone be entitled to the exemption benefits.

5. In the Office Memorandum dated 20-10-2011 emanating from the Under Secretary, Ministry of Power it is clarified that mega/ultra mega power projects wherein the capacities of a number of units totals up to at least 1000 MW are eligible to avail the requisite benefits under the mega status certificate, issued in terms of condition No. 86 of Notification No. 6/2006-C.E., dated 1-3-2006. Board proceeding dated 21-8-2012 also reiterates this position. Ld. AR for Revenue states that in the circumstances the issue is now settled in favour of the assessee."

8. In view of the above, we have no hesitation in taking the view that the appellant will be entitled to the benefit of Notification No.06/2006-CE dated 01.03.2006 as amended. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(V.Padmanabhan)
Member (Technical)