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

Appeal No. E/75033/2019 & E/587/2008

(Arising out of Order-in-Appeal No. 130/Kol-III/2018 dated 12.09.2018 passed by the Commissioner of CGST & CX (Appeal-I), Kolkata) and Order-in-Original No. 23/COMMR/CE/KOL-III dated 19.09.2008 passed by the Commissioner of Central Excise, Kolkata – III)

TIL Limited

....Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-III

....Respondent (s)

Appearance:
Shri Hemant Jajodia, CA. for the Appellant (s)
Shri A. K. Biswas, Suptd.(AR) for the Respondent(s)

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

Date of Hearing:- 09.04.2019
ORDER NO. **FO/75448-75449/2019**

PER BENCH

The appeal No. E/75033/2019 is directed against the Order-in-Appeal No. 130/Kol-III/2018 dated 12.09.2018. The other appeal No. E/587/2008 is directed against Order-in-Original No. 23/ COMMR /CE /KOL-III dated 19.09.2008.

E/75033/2019

2. The appellant supplied certain goods in February, 2005 without payment of duty, by availing the benefit of Notification No. 10/97-CE dated 01.03.1997. This Notification grants exemption from payment of excise duty for goods cleared to Public Funded Research Institutions as well as to certain other Institutions. The description of the goods as well as conditions to be satisfied, for such duty free clearance is also specified in the notification. The appellant received the certificate as

required under the notification from the Director, Defence Research and Development Organization ('DRDO') for certain goods. There is no dispute that DRDO is one of the organizations for whom the goods may be cleared subject to production of a certificate from an Officer of appropriated rank.

3. The certificate dated 07.02.2005 was issued for the following goods:-

"Prototype for Counter Mine Flail Carrier Vehicle" for total cost of Rs. 1,24,00,000/-. The category of the goods under Table-3 of the notification was indicated 1(a) which covers scientific and technical instruments, apparatus, equipments (including computers).

The notification under 1(d) of Col. 4, prescribes a value limit of Rs. 50,000/- for 'Prototype'. The department was of the view that the certificate was for 'Prototype' and will not be entitled to the benefit of the notification since the total cost of the goods was more than the value limit prescribed for 'Prototype'.

4. The certificate dated 15.02.2005 was issued by DRDO in favour of the appellants for the following goods:-

"Material Handling Device for Modular Bridge" for a total cost of Rs. 35,00,000/-. The category of goods was indicated as 1(d) "Prototype". The department was of the view that the benefit of the notification will not be available to the goods under the certificate since category 1(d) is for prototype for which value limit of Rs. 50,000/- applies.

5. The Department proceeded to deny the benefit of Notification No. 10/97-CE by issue of a Show Cause Notice dated 2.5.2006. The original as well as 1st Appellate Authorities upheld the rejection of

exemption under the above notification. Hence the present appeal before the Tribunal.

E/587/2008

The dispute in this case is restricted to only the certificate dated 15.02.2005 issued by the DRDO for ""Material Handling Device for Modular Bridge" for a total cost of Rs. 70,00,000/-. The certificate indicated the category of goods under 1(d) as 'Prototype'. The objection of Revenue to the clearance of these goods under Notification No. 10/97-CE dated 1.3.1997 is for the same reason as above. The Lower Authorities denied the benefit of the exemption claimed.

6. Shri Hemant Jajodia, Ld. CA appeared on behalf of the appellant and Shri A.K. Biswas, Ld. DR represented the Department.

7. The Ld. CA submitted that the denial of the benefit of the notification was unfair and prayed for grant of the exemption. With reference to clearances of goods in Appeal No. E/75033/2019; he submitted that the appellant had taken up the matter with the DRDO who, in turn, issued revised Certificates correcting the discrepancies in respect of the earlier certificate. In respect of certificate dated 7.2.2005, the description of the goods has been modified by deleting the word 'Prototype'. The category of the goods has been modified in respect of the certificate dated 15.02.2005. The amended certificate in this case indicates corrected category of the goods under 1(a) of the notification. However, the departmental authorities have declined to take note of such amendment which was carried out subsequent to the clearances of the goods.

8. With reference to the clearances in respect of appeal No. E/587/2008, he submitted that the goods involved, were same as those covered by the certificate dated 15.02.2005 but he submitted that the appellant was unable to obtain the amended certificate from DRDO. However, he drew our attention to the Purchase Order dated 5.3.2004 placed by DRDO on the appellant for supply of 3 sets of "Material Handling Device for Modular Bridge" . He added that one set of the item was the subject matter of appeal No. E/75033/2019 whereas the other two sets were covered by the appeal No. E/587/2008. He submitted that DRDO had made identical mistakes in the certificate dated 12.3.2004 by indicating the category of goods wrongly under 1(d) even though they were not 'Prototype'. He submitted that the benefit of notification cannot be denied and the appellant should not be penalized for discrepancies in the certificate issued by DRDO which is one of the Agencies specified in the notification.

9. The Ld. D.R. justified the impugned order.

10. The dispute is regarding claim of the appellant for the benefit of notification No. 10/97-CE dated 1.03.1997. The notification permits duty free clearances for goods to be supplied to Public Funded Research Institutions. DRDO, to whom the appellant has cleared the goods, is one of the agencies specified in the notification.

11. We find that the certificates have been issued by the proper authorities specified in the notification. The Department noticed discrepancies in the original certificates issued by the DRDO. However, the DRDO has subsequently issued amended certificates in respect of clearances which are the subject matter of appeal No. E/75033/2019.

We find that the goods cleared by the appellant are covered by the amended certificates and the appellant will be entitled to the benefit of the duty free clearance under the said notification.

12. In respect of the goods which are the subject matter of appeal No. E/587/2008, we find that the goods mentioned in the DRDO certificate are not in the nature of 'Prototype' as can be seen from the amended certificate issued by DRDO in respect of one set of the items for appeal no. E/75033/2019. Thus, we are inclined to take the view that the benefit cannot also be denied for the same goods cleared to DRDO which are the subject matter of appeal No. E/587/2008.

13. In view of the above discussions the impugned orders are set aside and both the appeals are allowed.

(Dictated and pronounced in the open court.)

(P.K. Choudhary)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

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