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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.106 of 2010

(Arising out of Order-in-Appeal No. 191/Kol-III/09 dated 17.11.2009 passed by Commissioner of Central Excise (Appeal-I), Kolkata.)

M/s. Cabcon India Private Limited
(4A, Pollock Street, Room No.21, Ground Floor, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-III

.....Respondent

(Bamboo Villa, 7th Floor, 169, A.J.C. Bose Road, Kolkata-700014.)

APPEARANCE

Dr. Samir Chakraborty, Senior Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75361/2022

DATE OF HEARING : 13 June 2022
DATE OF DECISION : 17 June 2022

P. ANJANI KUMAR :

Maharashtra State Electricity Board (MSEB) awarded a contract to the joint venture of Asea Brown Bovery Ltd., Vadodara and Best and Compton Engineering Ltd., Chennai for supply of specified goods and the supplies to be made in India to a project financed by Japan Bank for International Co-operation Fund (JBIC). The Appellant got a subcontract for the same on 23.12.2000 and the same was amended on 13.01.2001. In terms of Notification No.108/95-CE dated 28.08.1905 MSEB arranged for the necessary certificate for procurement of goods. The Appellant has submitted a certificate to the jurisdictional authorities and cleared goods i.e. ACSR conductors , totally of 1,78,922 kg. valued at Rs.1,23,93,135/-, during the period 20.02.2001 to 06.10.2001. The department has opined that the Appellants are not eligible for the exemption as JBSE cannot be considered as an international organization within the scope of the Notification. Therefore the benefit was not available to the projects funded by JBSE. A show cause notice was issued to the Appellants demanding the duty of Rs.19,82,901/- along with interest and penalty under Section 11AC and Rule 25 of Central Excise Rules. While proposing confiscation of goods under Rule 173Q (2) of Central Excise Rules, 1944, Additional Commissioner has confirmed the demand vide Order-in-Original dated 22.12.2006. On appeal filed by the Appellant, Ld.Commissioner(Appeals) has upheld the findings of the lower authority. Hence the present Appeal.

2. Dr. Samir Chakraborty, Ld. Sr. Counsel, appearing on behalf of the Appellant submits that the impugned proceedings are hit by limitation as show cause notice dated 23.06.2003 was issued beyond the prescribed period laid down in the proviso to section 11AC of the Act.

3. Contrary to the findings in the impugned order there was no mistake, willful misstatement or suppression of material facts or any fraudulent activity on the part of the Appellants with intent to evade payment of duty and there was no contravention of the relevant rules or provisions of the Act or Rules made thereunder by the Appellants. Ld. Sr.Counsel submits that the Appellant, as a dutiful taxpayer, has disclosed full and complete details and facts to the department; immediately after the receipt of the certificate from Best and Compton Engineering Ltd, Chennai, they have intimated to the jurisdictional Asstt. Commissioner vide a letter dated 14.02.2001. The Appellants

thus submitted all relevant details including the copy of the certificate. However, no objection or reservation in any kind whatsoever was expressed by the authorities. The Appellant was also regularly filing RT-12 returns. That being the case, the Appellant cannot be faulted with and it cannot be alleged that they have suppressed any material fact. It is only in 2003 that the Tribunal in the case of Danke Electricals Ltd. Vs. Commissioner of Central Excise and Customs [2003 (160) ELT 414 (T)] decided that the said certificate is not valid for the purpose of exemption under Notification No.108/95-CE. Ld. Sr.Counsel submits that in the above said background, extended period cannot be invoked. He relies upon the following cases:-

(i) Commissioner of Central Excise & Customs Vs. EMI Transmission Ltd. [2013 (292) ELT 329 (Bom), affirming EMI Trasmission Ltd. Vs. CCEx & Cus., [2011 (273) ELT 264 (T)]

(ii) Commissioner Vs. Polycab Wires Pvt.Ltd., [2010 (260) ELT 49 (Guj.)] – affirmed by the Supreme Court in Commissioner Vs. Polycab Wires Pvt.Ltd., [2011 (269) ELT A58 (SC)]

(iii) Hivoltrans Electricals Pvt.Ltd. Vs. Commr. of C.Ex. & Cus., [2004 (175) ELT 739 (T))]

(iv) Danke Electricals Ltd. Vs. Commissioner of C.Ex. & Cus, [2003 (160) ELT 414 (T)

(v) Jyoti Structures Ltd. Vs. CC Ex., & Cus, [2004 (167) ELT 226 (T)]

(vi) Apar Industries Ltd. Vs. CCE, [2009 (236) ELT 171 (T)]

4. Ld. Sr.Counsel further submits that the department has erred in relying on the case of Sterlite Industries (I) Ltd. Vs. Transmission Corporation of Andhra Pradesh Ltd. [2005 (189) ELT 266 (AP). The ratio of the said case is mis-conceived and cannot be a basis to make out a case against the Appellants for suppression of material facts. Ld.Sr.Counsel further submits that as the Appellant is not liable to pay any duty, they are also not liable to pay any penalty.

5. Shri A.Roy, Ld.Authorized Representative, appearing on behalf of the Revenue, reiterates the findings in the impugned orders.

6. Heard both sides and perused the records of the case.

7. At the outset the Ld. Sr. Counsel has fairly submitted that they are not arguing the case on merits. However, they are disputing the invocation of extended period for issuance of the show cause notice. We find that a certificate was given by M/s. MSEB on 23.10.2000 and the same was counter-signed by the Principal Secretary (Energy), Govt. of Maharashtra. The Appellants vide letter dated 14.02.2001 have informed the jurisdictional Asstt. Commissioner about their intention to avail the benefit of the Notification No.108/95-CE on the strength of the said certificate. The Appellants have started making clearances within one week of the above said letter. The Appellants have cleared their goods during the period 20.02.2001 to 06.10.2001 and they have been filing RT-12 returns regularly. These facts have not been disputed either in the impugned orders or by the Authorized Representative during the course of hearing. We find that though the department was informed as early as February 2001 took note of the ineligibility of the Notification in June 2003 by which the time limit prescribed for issuance of show cause notice for duty not paid not levied as already expired. We find that the department to cover up their inaction immediately after the submission of the said letter by the Appellants have taken recourse to invocation of extended period. We find that this is not legal and proper. No material evidence has been suppressed by the Appellants with intent to evade payment of applicable duty. In fact only in 2003, the Tribunal has decided that said certificates are not valid for availing exemption under Notification No.108/95-CE.

8. This being so, the Appellants cannot be faulted for availing exemption in the *bona fide* belief that the said certificate issued by the competent authority is valid for availing the exemption. Under these circumstances and the facts of the case and the case law relied upon by the Ld. Sr.Counsel for the Appellants, we find that no case has been made for invocation of extended period. Therefore, we are of the

concerned opinion that the impugned order cannot be sustained to be legal and proper.

9. In the result we set aside the impugned orders and allow the Appeal with consequential relief, if any, as per law.

(Order pronounced in the open court on 17 June 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(P.ANJANI KUMAR)
MEMBER (TECHNICAL)

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