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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.20 of 2010

(Arising out of Order-in-Original No.37/Commr./CE/Kol.III/2009-10 dated 06.10.2009 passed by Commissioner of Central Excise, Kolkata)

M/s Ramsarup Utpadak, Unit II
68,East Ghoshpara Road, Athpur,Shyamnagar, Dist.-24 Parganas (North), W.B.

Appellant

VERSUS

Commissioner of Central Excise, Kolkata III
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPERANCE :

None for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.75522/2023

DATE OF HEARING : 30 .05.2023
DATE OF DECISION : 30 .05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the cenvat credit has been denied. Consequently, the same is ordered to be recoved with interest and an equivalent amount of penalty was also imposed.

2. The facts of the case are that the appellant supplied TMT Bars under Central Excise Tariff Sub-Heading No.72142090 at nil rate of duty to M/s Nagarjuna Thermal Power Project set up by M/s Nagarjuna Power Corporation Limited, an inter-state Thermal Power Plant of capacity of 1015 MW, which qualifies as a Mega Power Project as per Notification

No.21/2002-Cus dated 01.03.2002 Sl.No.400. The goods were supplied to the project without payment of Central Excise duty in terms of Project Authority Certificate issued by the Chief Executive Officer, Nagarjuna Power Corporation Limited dated 06.09.2007. In accordance with the Notification No.6/2006-CE dated 01.03.2006 Sl.No.91, it was mentioned that if the goods are exempted from Excise duty leviable under the first schedule to the Customs Tariff Act, 1975 and the additional duty leviable under the said Customs Tariff Act when imported into India.

2.1 A show-cause notice was issued to the appellant alleging that during the period from February, 2008 to March, 2008, the appellant cleared the imported goods at Nil rate of duty to M/s Nagarjuna Thermal Power Project set up by M/s Nagarjuna Power Corporation Limited, which qualifies as a Mega Power Project as per Notification No.21/2002-Cus dated 01.03.2002 Sl.No.400. The goods were supplied to the project without payment of Central Excise duty in terms of Project Authority Certificate dated 06.09.2007 read with amendment No.4 to the Project Authority Certificate dated 21.01.2008.

2.2 As per the provisions of Notification No.6/2006-CE dated 01.03.2006 Sl.No.91, the goods can be dispatched at Nil rate of duty based on two conditions, namely, (a) goods to be supplied against international competitive bidding and (b) Customs duty and Additional duty of Customs leviable on the goods are exempted when imported in India.

2.3 In this case, the appellant acted as a sub-contractor of M/s Lanco Infratech Limited for supplying of FE-415 Grade Reinforcement Steel of assorted sizes in implementing the initial setting up of the project vide reference dated 06.09.2007 of the Chief Executive Officer, Nagarjuna Power Corporation Limited and the project was duly certified by the Joint Secretary to the Government of India, Ministry of Power vide letter dated 11.04.2007.

2.4 The goods were supplied by the appellant falling under Chaper 72 and the same are not covered under exemption Notification No.21/2002-Cus dated 01.03.2002 inasmuch as that they are not included in the list of goods specified under the said exemption Notification. Therefore, the goods can be classified under Chapter 98 of the Customs Tariff Act and attract exemption owing to the fact that the Chapter deals with only Project Imports of certain commodities, mainly, all items of machinery or raw materials for manufacture of those machinery. TMT bar is neither machinery as described under Chapter Heading 98.01 of the CTA nor raw materials for manufacture of those machinery. As a consequence, exemption on TMT bar is not available. Therefore, the conditions of Project Import Regulation have not been fulfilled.

2.5 Further, it was found that the appellant has claimed Customs duty exemption vide Notification No.91/2004-Cus dated 10.09.2004, which is applicable for holder of Advance License. The appellant has not produced any Advance License in order to qualify for exemption under the said exemption Notification. In the event of Customs duty not being fully exempted, the condition of zero Customs duty has not been fulfilled in terms of Notification No.6/2006-CE dated 01.03.2006 and thereby the appellant is not entitled to avail full exemption and therefore, is liable to pay Central Excise duty.

2.6 The matter was adjudicated. The demand of duty was confirmed along with interest. Penalty was also imposed on the appellant. Against the said order, the appellant is before us.

3. As per the records, the appellant submits that the TMT bars were sold by the appellant, which are used in Mega Power Project against the goods to be supplied against the international competitive bidding. These facts are not in dispute. Therefore, they are entitled to get the benefit of the said Notification.

4. To support his contention, he relied on the decision in their own case vide Final Order No.FO/77022/2017 dated 28.08.2017 and Industrial Perforation (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Kolkata III reported in 2020 (371) ELT 604 (Tri.-Kolkata).

5. Heard the ld.A.R. for the Revenue and considered the submissions and perused the records.

5. We find that this Tribunal in the appellant's own case has observed as under :

> *"3. With this background, we have heard Shri N.K.Chowdhury, Counsel for the appellant and Shri*

S.Mukhopadhyay, Counsel for the Department. On perusal of the records, it is seen that the identical issue has come up in the case of Cords Cable Industries Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur I reported in 2016 (342) ELT 264 (Tri.Del.) where it was observed that :

*"**5.** We find that in the same set of facts came up for decision before this Tribunal in earlier cases. In Sarita Steels and Industries Ltd. v. CCE vide Final Orders Nos. 1076-1081/2010, dated 15-7-2010 [2011 (264) E.L.T. 313 (Tribunal)], the Tribunal held that when the fact that supplies are made to mega power projects and all the conditions have been fulfilled the goods which are required for execution of mega power project are categorically exempted by the said customs notification. So in Om Metals SPML JV Unit 2 v. CCE & ST, Jaipur - 2013 (298) E.L.T. 79 (Tri.-Del.), the Tribunal held that there is no Heading 9801 in Central Excise Tariff which is only in Customs Tariff. The goods manufactured in India cannot be classified under 9801, accordingly, denial of exemption on that ground is not tenable. Further, the Tribunal in Paramount Communications Limited vide Final Order dated 23-6-2016 examined the very same issue and held the denial of exemption on the ground of classification shown under Customs Notification is 9801, is not sustainable. The same ratio has been followed by the Tribunal in KEI Industries Limited vide Final Order No. 52371/2016, dated 1-7-2016.*

***6.** In view of the above decided cases, it is clear that the denial of the exemption to the appellant is not legally sustainable. Admittedly, the condition stipulated for exemption under Notification No. 6/2006-C.E. has been fulfilled by the appellant except for the classification in column 2 of Entry No. 400 in Customs Notification No. 21/2002-Cus. As clearly noted, the* *classification [Heading] 9801 is not available in Central Excise Tariff and the same relates to project import, as such the denial of exemption on this grounds is legally not sustainable. Accordingly, we set aside the impugned order and allow the appeal."*

By following our earlier decision, we find no reason to sustain the impugned order.

4. In the result, the appeal is allowed."

6. Further, in the case of Industrial Perforation (India) Pvt. Ltd. (supra), this Tribunal has observed as under :

*"**7.** We find that the goods have been cleared by the appellants to the specified Mega Power Projects against International Competitive Biddings and the said facts have duly been recorded in the impugned order and there is no dispute on the said facts. The notifications under which exemptions have been claimed by appellants are subject to condition that the said goods, when imported into India, are exempted from payment of customs duty. In the instant case, since the goods have been supplied for setting up of Mega Power Projects, we find that the Learned Commissioner in his adjudication order has not negated the submissions made by the appellant regarding the availability of the exemptions from customs duty. Had the said goods been imported from outside India, the same would have been eligible for exemption as 'projects import' as available under the aforesaid Notification No. 21/2002 (supra). We also note that in an identical case, as relied upon by the appellant in the case of Cords Cable Industries Pvt. Ltd. (supra), the Tribunal has allowed the excise exemption wherein it has been observed in para 6 that :-*

"6. In view of the above decided cases, it is clear that the denial of the exemption to the appellant is not legally sustainable. Admittedly, the condition stipulated for exemption under

Notification No. 6/2006-C.E. has been fulfilled by the appellant except for the classification in column 2 of Entry No. 400 in Customs Notification No. 21/2002-Cus. As clearly noted, the classification [Heading] 9801 is not available in Central Excise Tariff and the same relates to project import, as such the denial of exemption on this ground is legally not sustainable. Accordingly, we set aside the impugned order and allow the appeal."

Further, the Tribunal in the case of Paramount Communication Ltd. (supra), as relied by the appellant, has observed that :-

"9. We find that goods in question are classifiable under Chapter 85 of the Tariff. Under Central Excise Tariff there is no Heading 98.01 which exists in Customs Tariff only. Since the goods manufactured in India cannot be classified under Heading 98.01 of the Central Excise Tariff, denial of the exemption on the ground of non-fulfilment of condition of Project Import Regulation is not sustainable particularly when Condition No. 86 of the Notification No. 21/2002, dated 1-3- 2002 is fulfilled by them. Similar submissions were made by Revenue for denying the benefit of Notification 6/2006-C.E., dated 1-3-2006 on the ground of non-fulfilment of conditions of the Project Import Regulation in case of Sarita Steels and Industries Ltd. reported in [2011 (264) E.L.T. 313] and Tribunal in that case allowed the exemption under Notification 6/2006-C.E., dated 1-3-2006 to the assessee. Reference can be made to another decision of the Tribunal in the case of Om Metals SPML JV Unit 2 v. CCE, Jaipur as reported in [2013 (298) E.L.T. 79 (Tri.-Del.)]. We, therefore, hold that appellants are eligible for exemption under Notification No. 6/2006-C.E., dated 1-3-2006 and accordingly set aside the impugned order and allow the appeal."

We note that the entries in the Excise Exemption Notifications as availed by the assessee appellant in column No. (2) for reference of Chapter or heading specifically states "Any Chapter", which *clearly implies that goods sought to be cleared by assessee under the said exemption entries may fall under any of the chapter headings of Central Excise Tariff with the only condition that they are supplied under International Competitive Bidding which are exempted from customs duty. The observation made by the Learned Commissioner to deny the exemption that "the goods manufactured by appellant i.e. cable tray and accessories falling under chapter sub-heading 7308 90 90 which is used as support for laying the cable that is structures cannot be treated as machines, spare parts or raw materials to be used in making such goods of Chapter 84" is completely irrelevant for the reason that goods falling under any of the chapter headings of Central Excise Tariff is exempted as stated above.*

We further note that the Learned Commissioner has also noted that goods must be unconditionally exempted under Notification No. 21/2002-Cus. (Project Imports) when imported into India. We are of the view that the Learned Commissioner has attempted to examine the fulfilment of a condition which is not appearing in the subject Excise Exemption Notifications. We observed that the only condition is that goods are cleared under International Competitive Bidding for use in the specified Mega Power Projects which are exempted from customs duty. The supply of subject goods in the instant case for Mega Power Project under International Competitive Bidding is on record and not in dispute. Moreover, since the case of the appellant has already been settled by the Co-ordinate Bench of the Tribunal as noted above, the appellant is legally entitled to exemption from payment of Central Excise duty and thus the duty demand is not sustainable.

In view of the above discussions, the impugned order is set aside and the appeal is allowed with consequential relief."

7. It is not in dispute that the subject goods are used for Mega Power Project through International Competitive Bidding. Therefore, by relying on the above cited decisions, we hold that the appellant is entitled for the exemption as claimed.

8. In that circumstances, we do not find any merit in the impugned order and the same is set aside.

9. In the result, the appeal is allowed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-

(K.Anpazhakan)
mm **Member (Technical)**