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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.315 of 2009

(Arising out of Order-in-Original No.39/Commr./Bol/09 dated 23.02.2008 passed by Commissioner of Central Excise, Bolpur)

M/s Alstom Projects India Limited
Dist.-Burdwan, Durgapur-713206

Appellant

VERSUS

Commissioner of Central Excise, Bolpur
Nanoor Chandidas Road, SIAN, Dist.-Birbhum, Bolpur

Respondent

APPERANCE :

Shri Rahul Tangri, Advocate for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO…75628/2023

DATE OF HEARING : 02 .06.2023
DATE OF DECISION : 02 .06.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of duty has been confirmed on the compensation received as a result of cancellation of orders by West Bengal Power Development Corporation, treating the same as additional consideration under Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000.

2. The facts of the case are that The Appellant is *inter alia* engaged in the business of manufacturing of boiler and boiler parts classifiable under Chapter Heading 8402 of the First Schedule to the Central Excise Tariff Act, 1985. Accordingly, the Appellant obtained registration under

the Central Excise Act, 1944 and held registration number AABCA8679FXM011.

2.1 The Appellant entered into two contracts with West Bengal Power Development Corporation Ltd. for supply and installation of 3x210 MW Boiler (Unit 5, 4 and 3) vide LOI WBPDCL/ MD/ ORDER/ BKTPP/ 419 dated 19.06.1989 and LOI No. WBPDCL: DCE/ 1.02. 8758 dated 22.08.1989. The supply contract entailed both manufactured goods as well as bought out goods procured locally as well as imported.

2.2 However, due to financial crisis, the customer partly cancelled one contract on 19.08.1994 and issued the Order of Cancellation WBPDCL/ 10 dated 18.03.1997 to terminate the unexecuted portion of such contract to mutually agree on the amount of damages payable in this regard.

2.3 Soon thereafter, the customer advised the Appellant to temporarily halt the second contract as well and also refrain from procuring fresh inputs in this regard. Till such date, the Appellant duly discharged excise duty on all the goods manufactured and cleared from their premises.

2.4 On similar footing, the customer issued Order for Cancellation WBPDCL/ Plng/ BkTPP4&5/ 4686 dated 30.12.2002 to terminate the unexecuted portion of the second contract as well. On the same date, both parties executed a Final MOU to mutually agree on the action to be taken with respect to the executed portions of the agreements, the goods lying with the Appellant and the total damages payable by the customer as compensation for loss suffered by the Appellant for termination of the contracts.

2.5 The damages payable by the customer were computed as follows in the impugned order:

Particulars	**Units 5 & 4**	**Unit 3**	**Total**
Engineering charges: 7.5% of balance contract price for cancellation of the contract.	5,79,54,802	4,23,28,680	**10,02,83,482**
Committed labour: @ 5% of balance contract price.	3,86,36,534	-	**3,86,36,534**
Rental of space for holding the inventory of raw material/ WIP/ RFS from 1994 to 2002	2,10,69,569 (72,41,582)	1,21,82,090	**3,32,51,659**
Transport, handling, port terminal charges and storage charges of imported goods/ raw material.		1,26,74,672	**(25,66,910)**
(Less:) Reduction as part of final settlement	(80,00,000)		
Total	**10,24,19,323**	**6,71,85,442**	**16,96,04,765**

2.6 As per the Final MOU, the following was mutually agreed between the parties:

a. Damages: The amount of damages payable to the Appellant was mutually agreed to be made on account of unpaid supply, services and expenses incurred by the Appellant.

b. Remainder of goods: The raw materials, work-in-progress and finished goods lying at the premise of the Appellant would be handed over to the customer. At the time of such clearance, the Appellant discharged applicable excise duty on finished goods/ WIP, in terms of the MOU, incidence whereof was borne by the customer. Such payment of duty was appropriately disclosed in the ER-1 return filed by the Appellant.

2.7 The Appellant, vide their letters dated 10.05.2002 and 19.03.2003, duly intimated the department regarding cancellation of the contracts as above.

2.8 Despite the above intimation, the impugned SCN was issued on 10.10.2007 (viz. after 4.5 years) to propose a demand of excise duty on the compensation/ damages received from the customer by invoking the extended period on the ground of suppression. Even after having provided detailed reasons for such non-payment, the impugned order confirmed such demand of excise duty along with interest and equivalent penalty.

3. The ld.Counsel for the appellant submits that the issue is no longer res integra and the same has been decided in favour of the appellant in various judicial pronouncement. To support his contention,

he relied on the following cases :

(i) Caparo Engineering India (P) Ltd. Vs. CCEx., Indore : 2017 (5) TMI (448) CESTAT-New Delhi ;

(ii) Commissioner Vs. Hawk Engines : 2001 (134) ELT 496 (Tribunal) ;

(iii) Skoda Auto Volkswagen India Private Ltd. v. CCE, Aurangabad, 2023 (2) TMI 658 - CESTAT Mumbai

(iv) Vimlachal Print & Pack Pvt. Ltd. v. CCE, Ahmedabad, 2017 (6) G.S.T.L. 496 (Tri. – Ahmd.)

(v) Essel Propack Ltd. v. CCE, Thane-I, 2016 (341) E.L.T. 470 (Tri. – Mum.)

(vi) KSB Pumps Ltd. v. CCE, 2007 (216) E.L.T. 51 (Tri. – Mum.)

(vii) Inox Air Products Limited v. CCE, 2001 (134) E.L.T. 224 (Tri. – Mum.)

(viii) CCE, Belgaum v. Praxair India Ltd., 2008 (223) E.L.T. 596 (Tri. – Chennai)

(ix) CCE, Jamshepur v. Bhagwati Oxygen Ltd., 2000 (117) E.L.T. 647 (Tribunal)

He, therefore, submits that the duty is not leviable on damages received as a result of cancellation of agreement.

4. Finally, he submitted that extended period of limitation is not invokable in the facts and circumstances of the cases.

5. Heard the parties and perused the records.

6. We find that in this case, the show-cause notice has been issued by invoking extended period of limitation as the facts that the appellant has submitted all the material information to the Department through their letter dated 10.05.2002 about non-receipt of two contracts and thereafter, vide their subsequent letter dated 19.03.2003, which was

submitted on 25.03.2003, the appellants informed the Assistant Commissioner of Central Excise, Durgapur Division about the final cancellation of the contracts by the customer and appended the orders of cancellation of contracts issued by the customer along with the final MOU. As per the said MOU, the appellant received the payment.

7. We find that as the show-cause notice has been issued to the appellant on 10.10.2007 by invoking the extended period of limitation, in that circumstances, we hold that as all the information were available to the Department in 2003 itself and no information has been suppressed by the appellants, in that circumstances also, the show-cause notice issued after the period of four years of the information gathered is not sustainable and is highly barred by limitation.

8. In view of this, without going into the merits of the case, we hold that all the demands are barred by limitation

9. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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