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

REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 771 & 772 of 2011

(Arising out of Order-in-Appeal No.183-184/Kol-III/2011 dated: 18.05.2011 passed by the Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s WPIL Limited
(22, Ferry Fund Road, Panihati-700114,North 24 Parganas)

...Appellant

VERSUS

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

...Respondent

APPEARANCE :

Shri N.K. Chowdhury, Advocate for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON,BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75934-75935/2023

Date of Hearing : 26.04.2023

Date of Pronouncement :26th June, 2023

PER K. ANPAZHAKAN

The Appellant is a manufacturer of P.D. Pumps and spares. The Appellant cleared the said goods by availing the exemption as per Notification No. 6/2006-CE dated 1.3.2006 to M/s. IVRCL Infrastructure & Projects Ltd., C/o Jindal Power Ltd. and Udupi Poluler Corporation Ltd. In terms of the the said notification, all good supplied against international competitive bidding is exempted from payment of Central Excise duty as mentioned in Serial No. 91 of the said notification, subject to fulfillment of condition 19 of the said notification. Condition No.19 provides that the exemption available if the goods are exempted for duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the Customs Tariff Act when imported into India. In terms of Notification No. 21/20025-Cus dated1.3.2002 as amended, the goods are exempted as mentioned in Serial No. 400 of the said notification. Serial No.400 is subject to Condition No. 86 which provides for a certificate from an officer not below the rank of Joint Secretary, Government of India, Ministry of Power as mentioned therein.

2.Thus the appellant contended that they were entitled to the benefit of Notification No. 6/2006-CE dated 1.3.2006, in view of the fact that there was no dispute with respect to the goods which were supplied against international competitive bidding and supported by Project Authority's Certificates and also supported by Certificate of the Joint Secretary, Government of India, Ministry of Power. They have fulfilled all the conditions of the Notifications and hence, they were eligible for the benefit of Notification No.6/2006-CE dated 1.3.2006.

3. A Show Cause Notice dated 20.12.2007 was issued to the Appellant alleging that goods were not exempted from payment of Customs duties and hence, the conditions stipulated in the notification has not been fulfilled. The said Notice was adjudicated vide Order-in-Original dated 15.07.2008, wherein the adjudicating authority confirmed the demands made in the Notice. On appeal, the Commissioner(Appeals) vide O-I-A dated 18.05.2011, upheld the demands confirmed in the Order-in-Original. Aggrieved against the impugned order, the Appellant filed the present appeal.

4. In their submissions, the Appellant submitted that Notification No.6/2006-CE dated 1.3.2006 requires that similar goods when imported are exempted from payment of Customs duty. They stated that as per Notification No.21/2002-CUS dated 1.3.2002, power plant is exempted from payment of customs duty, if a certificate is issued by an officer not below the rank of Joint Secretary, Government of India, Ministry of Power. Those conditions have been fulfilled and hence, the exemption of Notification No.6/2006-CE dated 1.3.2006 cannot be denied.

5. The Ld A.R. reiterated the findings in the impugned order.

6. Heard both sides and perused the appeal records.

7. From the impugned order, we observe that the adjudicating authority has made certain observation regarding the grounds under which the Appellants were ineligible for the exemption and the same were affirmed by the appellate authority also. It was their observation that the goods cleared were classifiable under Central Excise Tariff Sub-heading Nos. 8413 & 8431 whereas the above mentioned Customs Notification exempted goods under Customs Sub-heading No.9801. Further, goods have been supplied to M/s. IVRCL Infrastructure & Projects Ltd. and there was no evidence that goods have been used in the power project set up by M/s. Jindal Power Ltd. The goods were supplied against specific purchase order of M/s. IVRCL Infrastructure & Projects Ltd. and not against international competitive bidding.

8. The appellant submits that M/s. Jindal Power Ltd. invited international competitive bidding. M/s. IVRCL Infrastructure & Projects Ltd. obtained the Order and Letter of Intent was issued by M/s. Jindal Power Ltd. to M/s IVRCl Infrastructure & Projects Ltd. The appellant was one of the suppliers, which is clearly evident from the Project Authority's Certificate forwarded to the Appellant vide letter dated 21.11.2006 by M/s IVRCl Infrastructure & Projects Ltd. The supply of goods to M/s IVRCl Infrastructure & Projects Ltd. was at the site of M/s. Jindal Power Ltd., which is amounting to supply of the goods to the Raigarh Thermal Power Project being set up by M/s. Jindal Power Ltd. Therefore, the supply of goods by the appellant to M/s IVRCl Infrastructure & Projects Ltd. amounts to supply of goods to M/s Mega Power Project. In the invoice, the said fact has been clearly mentioned. We observe that the above facts clearly indicates that the goods were supplied to Power Projects approved against international competitive bidding, as required for availing the benefit of the Notification 6/2006-Ce dated 01.03.2006.

9. The Appellant further submits that goods supplied by the appellant may fall under any Chapter heading, but if required for the mega power project, the same would be covered by Sub-heading No.9801 in terms of Notification No. 21/2002-CUS dated 1.3.2002. Thus, they contended that there is no dispute that the Appellant is eligible for the benefit of the exemption Notification No. 6/2006-CE dated 1.3.2006.

10.The Appellant stated that similar type of cases came up for consideration earlier before the Tribunals and it has been consistently held by the Tribunals in the similar set of facts and circumstances that the Appellants were eligible for the benefit of exemption Notification No. 6/2006-CE dated 1.3.2006. They relied upon the following decisions in support of their contention:

i) Sarita Steels & Industries Ltd. 2011 (264) ELT 313 (Tri.-Bang.)

ii) Cords Cable Industries Pvt. Ltd. 2016 (342) ELT 264 (Tri.-Del.)

iii) Paramount Communication Ltd. 016 (344) ELT 091 (Tri.-Del.)

iv) Commissioner v. Paramount Communication Ltd. 2018 (360) ELT A324(Raj.)

11.We observe that the decisions cited above are squarely applicable in the case of the Appellant as the facts and circumstances in the above mentioned cases are similar to that of the Appellant.

12.In the case of Sarita Steels & Industries Ltd, reported in 2011 (264) E.L.T. 313 (Tri.-Bang.), it has been held as under:

6. The issue involved in this case is whether the appellant company is eligible for benefit of Notification No. 6/2006-C.E. for the clearances made to a mega power project or not.

7. It is undisputed that the appellant herein had supplied angles, channel is, beams etc. to BHEL for the purpose of executing a mega power project. It is also undisputed that the clearance of the products without payment of duty by availing the benefit of exemption granted under Notification No. 6/2006-CE., was done so, after a certificate issued by Jt. Secretary Ministry of Power, Government of India to BHEl and consequent sub-contract given by BHEl. It is also undisputed that the appellant had produced certificate of the receipt of excisable goods at the sites of mega power project duty signed by authorized duly signed by the authorized representative of M/s. Jindal Power Ltd., who were sub-contractor of BHEL for execution of such mega power project. On the perusal of the entire Order-in-Original, we find that the adjudicating authority has sought to deny the benefit of exemption Notification No. 6/2006 only on two ground i.e. SSIL has not participated in the international competitive bidding and goods falling under chapter 72 of the Central Excise Tariff Act cannot be considered as goods which can be relatable to chapter 98.01 to get the benefit of customs Notification No. 21/2002 and nor the appellant nor BHEL, registered for ay project imports to get the benefit of customs Notification No. 21/2002 and nor the appellant no BHEL registered for any project imports.

8. At the outset, we would find that the entries in the Notification No. 6/2006 reds as under :-

Sl.	Chapter or heading	Description of goods	Rate	Condition
91	Any chapter	All goods supplied against International Competitive Bidding.	Nil	19

And the condition attached thereto is read as under :-

Condition 19.	If the goods are exempted from the duties of Customs leviable under the First Schedule to the Customs Tariff Act, 1965 (51 of 1976) ad the additional duty leviable upper Section 3 of the said Customs Tariff Act when imported into India.

9.it can be seen from the above reproduced entry No. 91 of Notification No. 6/2006 that goods of any chapter if supplied against international competitive bidding, exemption is available subject to the condition as reproduced above. The condition No. 19 requires all the goods re to be exempted under the Customs Tariff Act when imported into India. On perusal of the relevant entries in the Customs Tariff Act, we find that at entry No.400, the following is indicated in notification No.21/2002-Cus.

400 98.1Goods required for setting up of any Mega Power Project, so certified by an officer no below the rank of a Joint Secretary to the Government of India in the Ministry of Power, that is to Say

a) an inter-State thermal power plant of a capacity of 700MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or

b) an inter-State thermal power plant of capacity or 1000MW or more, located in the States other the those specified in clause (a) above; or

c) an inter-State hydel power plant of a capacity of 350MW or more, located in the States of Jammu and Kashmir, Sikkim, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura; or

d) an inter-state hydel power plant of a capacity of 500MW or more, located in states other than those specified in clause (c) above.

10.As has been stated by us earlier, it is undisputed that mega power project which was sought to be executed by BHEL has complied with the conditions of getting a certificate from an officer not below the rank of Jt. Secretary, Govt, of India in the Ministry of Power. After being awarded a contract for setting up a mega power project, for the execution of the same, BHEL appointed M/s. Jindal Power Ltd. as sub-contractor. M/s Jindal Power Ltd. In turn had procured angles, beams, channels etc. from the appellant for execution of such mega power project. We find that the SSIL has not participated in the international competitive bidding, but had cleared the said goods to M/s. Jindal Power Ltd. for execution of m mega power project. This being undisputed fact, we find that the decision of this Bench in the case of CST Ltd. (supra) squarely covers the issue. We may reproduce the said ratio which reads as under :-

> "6,,, The learned Advocate brought to our notice the relevant conditions of the exemption Notification. In terms of Notification No. 48/2004, against SI. No. 301, "all goods supplied against International Competitive Bidding, falling under any Chapter" are exempted subject to condition 64 of the Notification. Condition 64 reads as follows :-
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> "64,,, if the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India,"
>
> It is not in dispute that the goods imported for supply to Mega Projects are entitled to whole duty exemption under Customs Tariff Act. The next thing to be examined is whether the goods supplied are against International Competitive Bidding. The appellants are a sub-contractor of M/s. BHEL. M/s. BHEL is executing the Mega Project for Kahalgaon Super Thermal Power Project by International Bidding. The appellants have submitted ail the relevant records. The appellants are also found in the list of sub-contractors. Since the goods are supplied by the appellants to BHEL, who are executing the project by International Competitive Bidding, It is very clear that the goods cleared by the appellants should be considered as "goods supplied against International Competitive Bidding". There is absolutely no need that the appellants themselves should have been the bidder in International Competitive Bidding. In huge projects, the main contractor does not do everything. There is always a system of sub-contractors. If we take a view that the goods cleared by sub-contractor does not do everything. There is the ground they are not the bidders, the very purpose of the Notification would be defeated because the main contractor will be having hundreds of sub-contractors in Mega Projects. In our view, inasmuch as the appellants had supplied the goods to M/s. BHEL, who are the bidders, the very purpose of the Notification would be defeated because the main contractor will be having hundreds of sub-contractors in Mega Projects. In our view, inasmuch as the appellants had supplied the goods to M/s. BHEl, who are the bidders of International Competitive Bidding, the condition of the Notification is satisfied and there is no justification for denying the exemption notification to the appellant. The Tribunal, in the case of Automatic Electric Ltd. v. CCE. Mumbai-2004 (178) E.L.T. 524

(Tri.-Mumbai), has held that the benefit of exemption under Notification 108/59-C.E. is available to a sub-contractor when M/s. BHEL is the main contractor of an approved project. The fact that there was a contract between the main contractor and the sub-contractor will ensure that supplies made eventually react the project site. The ratio of the above case is clearly applicable to the present case. In these circumstances, we set aside the impugned order and allow the appeals with consequential relief, if any."

It can be seen that in the said case of CST Ltd., an identical issue was raised and again in respect of the very same executor of mega power project i.e. BHEL. We find that the ratio as reproduced hereinabove squarely covers the issue in favour of the assessee.

11. As regards submissions made by ld. SDR, we find that the wordings of the Notification No. 21/2002-Cus. Categorically indicates that the "goods" which are required for execution of mega power project are exempted. It is undisputed in the case before us that channels beams, angles are goods required for execution of mega power project. In view of this, the decision of the Hon'ble Supreme Court cited by the ld. SDR will not carry Revenue's case any further.

12. In view of the foregoing reasons, we hold that the impugned order is not in consonance with law and is unsustainable and is liable to be set aside and we do so. The impugned order is set aside and all the appeals are allowed with consequential relief, if any.

13. Following the decisions cited above, we hold that the Appellant is eligible for the benefit of Notification No. 6/2006-CE dated 1.3.2006, as they have fulfilled all the conditions required to avail the said exemption. Accordingly, we hold that the demands made in the impugned order are not sustainable and the same is liable to be set aside.

14. In view of the above discussion, we allow the appeal filed by the Appellant.

(Pronounced in the open Court on…26.06.2023..)

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

Sd/-

(K. Anpazhakan)
Member (Technical)

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