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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.719 of 2010
(On behalf of Appellant)

(Arising out of Order-in-Original No.08/Commr./CE/Kol.III/2010-11 dated 31.08.2010 passed by Commissioner of Central Excise, Kolkata III)

M/s Electrosteel Castings Limited
30, B.T.Road, Sukchar, Kolkata-700115

Appellant

VERSUS

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

Respondent

APPERANCE :

Shri Rahul Dhanuka, Advocate 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…76554/2023

DATE OF HEARING : 23 .08.2023
DATE OF DECISION : 23 .08.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand of Central Excise duty has been confirmed against the appellant along with interest and to impose equivalent amount of penalty.

2. The facts of the case are that the appellant is engaged in the manufacture of ductile iron pipes and pipe-fittings.

2.1 During the month of September, 2005, the appellant cleared 573.5 metres ductile iron pipes of 800 mm dia K9 from its Khardah Unit to M/s Trichy Construction Company Private Limited. During the relevant period, there existed two exemption Notifications, viz.

Notificaion No.6/2002-CE dated 01.03.2002 as amended by Notification No.47/2002-CE dated 06.09.2002 and Notification No.3/2004-CE dated 08.01.2004 for water treatment and supply projects. While the former was for supply of drinking water for human and animal consumption, the later was for supply of water for agricultural and industrial purpose.

2.2 The buyer i.e. M/s Trichy Construction Company Private Limited was awarded the work of shifting of raw water pumping main for delivery of water from Chembarambakkam Lake to Water Treatment Plant located in the premises of Hyundai Motor Company,SIPCOT Industrial Park, Irungattukottai to make it fit for human consumption by State Industries Promotion Corporation of Tamil Nadu Limited, a State Government Undertaking. Accordingly, the pipes were cleared by the appellant during the relevant period without payment of duty in terms of Sl.No.196A of the said Notification. Before the said clearance of the pipes, the appellant duly furnished to the jurisdictional Assistant Commissioner of Central Excise, Khardah, a Certificate issued by the Collector of Kancheepuram District under the cover of a letter. The said Certificate distinctly mentioned that the impugned pipes were cleared for intended use specified in the relevant Notification.

2.3 The proceedings were initiated against the appellant by issuance of show-cause notice dated 24.08.2006 to deny the benefit of relevant Notification by alleging that the pipes supplied by the appellant were laid for supplying water from source to storage tank owned by SIPCOT located in the compound of Hyundai and not for the delivery of water treatment plant and the treated water used for industrial purposes and not for human or animal consumption. The appellant has availed the benefit of exemption of duty against an improper certificate with the intent to evade payment of duty.

2.4 The show-cause notice was adjudicated. The demand of duty was confirmed against the appellant.

2.5 Against the said order, the appellant is before us.

3. It is the contention of the ld. Counsel for the appellant that once the requisite certificate for claiming the exemption has been issued by the competent authority, it is not open to the Central Excise Authority to deny the benefit of over-ruling the certificate as held by the Hon'ble Apex Court in the case of Zuari Industries Limited Vs. CCE reported in 2007 (210) ELT 648 (SC) and also held by this Tribunal in the case of Indian Hume Pipe Company Limited Vs. CCE reported in 2017 (9) TMI 695-CESTAT-Chennai, which has been dismissed by the Hon'ble Apex Court in respect of the appeal filed by the Revenue. He also relied on the decision of this Tribunal in the case of M/s SIL Vs. CCE reported in 2018 (7) TMI 418 – CESTAT-Kolkata..

4. On the other hand, the ld.A.R. for the Revenue, submitted that under the relevant Notification, the water is to be supplied for human and animal consumption and it is not in the case in hand. Therefore, they are not entitled for the benefit of exemption Notification.

5. Heard both sides and considered the submissions.

6. We find that in this case, the appellant had supplied the pipes to M/s Trichy Construction Company Private Limited by availing the benefit of Notification No.47/2002-CE dated 06.09.2002 and the Competent

Authority has issued the Certificate for intended use for the said pipes, which is extracted below for ready reference :

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Office of the District Collector,
Kancheepuram District,
Kancheepuram.

Letter No. Rc.No.4094/2005 Dated: .9.2005.

CERTIFICATE

This is to certify that the work of shifting of Raw water Pumping main for delivery of water from Chembarambakkam lake (Source) to Water Treatment Plant located in the premises of Hyundai Motor Company, Sipcot Industrial Park, Irungattukottai to make it fit for Human Consumption is being executed by Sipcot due to widening of NH4.

The above work has been awarded to M/s. Trichy Construction Company, No.12/G4/Rahumaniyapuram, Thillai Nagar, Trichy 18 wide work order No. CW/SDO/T.No.4/05-06.

The following pipes are required for this work.

a) 800 mm dia K9 DI Pipe = 850 Metres
b) 600 mm dia K9 DI Pipe = 1000 Metres

Since M/s. Trichy Construction company are not manufacturing these pipes; they have placed supply orders for supply of 850 metres of 800mm dia K9 DI pipes with M/s.Electrosteel Castings Ltd., Chennai and 1000 Metres of 600 mm dia K9 DI pipes with M/s.Lanco Industries Ltd., Chennai and supplies will be made from their factories at Khardah (West Bengal) and Rachagunneri (Andhra Pradesh) respectively.

This certificate is being issued in pursuance of the requirement under Notification No.47/2002. CE dated 6th September 2002 issued by Ministry of Finance, Government of India.

It is further certified that these pipes are cleared for intended use specified in the said notification.

2/9/2005

COLLECTOR

On going through the said Certificate, we find that the said Certificate has been issued in pursuance to the Notification No.47/2002-CE dated 06.09.2002 issued by the Ministry of Finance,Government of India and the use of pipes has also been explained.

7. In that circumstances, the said Certificate cannot be doubted as held by this Tribunal in the case of Indian Hume Pipe Company Limited Vs. Commissioner of Central Excise, Tiruchirappalli reported in 2017 (358) ELT 732 (Tri.-Chennai) wherein this Tribunal has observed as under :

> *"**6.** When the certificate of the Collector is perused, it shows that only the appellant was awarded the contract to carry out certain activities. That has also certified that there were certain materials required for execution of the Head Works and Pipe Lines from Coleroon River to various storage tanks and group sumps in the project. The Collector also indicated that the certificate was issued as a requirement of the Notification No. 47/2002-C.E., dated 6-9-2002. In absence of any proforma prescribed by the Notification, the certificate issued by the Collector was basis for the appellant to claim duty exemption. But it is very strange to note that when the Executive Engineer guided Revenue that the supply was not for the purpose of water treatment plant, further enquiry was not conducted by Revenue to ascertain the facts from the Collector. In absence of any enquiry, certificate issued by Collector cannot be discarded."*

8. Therefore, we hold that the appellants are entitled for the benefit of Notification No.47/2002-CE dated 06.09.2002 and are not liable to pay duty.

9. In view of this, we set aside the impugned order and allow the appeal.

(Operative part of the order was pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

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