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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.124 of 2011

(Arising out of Order-in-Appeal No. 41/Kol-IV/2010 Dated 08/12/2010 passed by Commissioner (Appeal-IV), Central Excise, Kolkata.)

Commr. of Central Excise, Kolkata-IV
(180, Shantipally, Rajdanga Main Road, 6th Floor,
Kolkata-700107)

Appellant

VERSUS

M/s. Kesoram Spun Pipes & Foundries
(P. O.-Adconnagar, Dist.-Hooghly, 712121)

R**espondent**

APPEARANCE :
Mr. S. Mukhopadhyay, Authorized Representative for the Appellant
None for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77427/2023

Date of Hearing : 17 October 2023
Date of Decision: 17 October 2023

PER R. MURALIDHAR:

The Appellant is manufactured of cast iron spun pipes falling under CET 7303.00. The Appellant claimed that they have cleared the pipes required for delivery of water from its source to plant and from there to the storage facility. Hence, they claimed that they are eligible for exemption under Notification No. 47/2002-CE dated 06.09.2002. This Notification is conditional Notification, wherein a Certificate from the Collector/District Magistrate/Deputy Commissioner has to be obtained. On the ground that the Appellant has not provided such certificates, demand of Rs.2,25,08,368/- was raised and confirmed in the due course. On Appeal, the Commissioner (Appeals) has noted that the Appellant has claimed that they have obtained the certificates for the intended use of pipes for various water supply schemes. He has noted that some of the certificates have been produced before him. He has passed the OIA holding as under:-

6. One of the points on which the lower authority has held against the appellant is that the certificates are not under the official letter-heads, without official stamps, etc. The original certificates were produced before me and these were as well produced before the lower authority. These Certificates have been given by the proper authorities and in the formats normally used by them. I do not find any deficiency in these certificates. Also it is not the case of the Department that these certificates are improper. The lower authority has questioned the form of certificates. In this regard, I find that nowhere in the notification is it specified that the certificates from the Collector/District magistrate/Deputy Commissioner of the district should have particular format and requirements. In the absence of this, the lower authority cannot reject such certificates for these technical defects/deficiencies. Therefore, these objections of the lower authority are over-ruled and the certificates cannot be rejected for these alleged deficiencies.

8. In appeal, a few copies of the certificates have been produced before me. Nor has the Department filed any rejoinder, furnishing copies of all the certificates which cover the impugned order. In the absence of this, it is difficult for me to come to a final conclusion, whether the certificates covering the period of demand mention the intended use and whether they are in conformity with the wordings used in the notification. I, therefore, set aside the demand under the impugned order and refer the matter to the lower authority for examining of each and every certificate and to give clear finding by issue of Order afresh in respect of each certificate, whether each of the certificates issued by the concerned authority are in conformity with the requirements of exemption under the notification. The appellant is also entitled to produce such additional evidence or submission as deemed fit and for which the appellant shall be granted sufficient opportunity of being heard before the lower authority takes a final decision. Any such order, if passed shall be confirmed to demand of duty and interest, if any. The lower authority shall take action within three months of the receipt of this order as the matter is very old. No *penalty under Section 11AC was warranted as no requirement for imposition of such penalty get satisfied. The penalty imposed is thus unconditionally set aside. [Emphasis supplied]*

2. After this, he has remanded the matter to the lower Authority to get verification done and has also set aside the entire penalties imposed under Section 11AC. Being aggrieved, the Revenue is before the Tribunal.

3. The Learned AR submits that the Commissioner (Appeals) does not have the power to remand the matter to the Adjudicating Authority. Therefore, questioning this decision, the Revenue has filed the present Appeal.

4. On going through the OIA, it is seen that the Commissioner (Appeals) has clearly stated the original certificates were produced before him and he did not find any deficiency in these certificates. He has also noted the same were also provided before the Adjudicating Authority. It is also seen that he has held that Section 11AC penalty is not warranted as, which shows that he is convinced that extended period demand is not sustainable when the suppression clause has not been brought at clearly in the OIO.

5. We are also in agreement with the Revenue's stand that the Commissioner (Appeals) does not have the power to remand the matter to the Adjudicating Authority. Having observed that original certificates have been produced before him and he is convinced about their veracity, if any further verification was required, he should have got the same done through the concerned Administrative wing of the Commissionerate and decided the issue by himself, without resorting to remand the matter to the Adjudicating Authority.

6. Since the issue pertains to 2005-2010, we do not see any purpose in remanding the matter to the Adjudicating Authority at this juncture after more than 13 years now. By filing this appeal, the Department has already effectively blocked the remand de-novo proceedings.

7. Therefore, considering the detailed findings given by the Commissioner (Appeals), we hold that the confirmed demand is

required to be set aside. Accordingly, we allow the Appeal with consequential relief, if any, as per law.

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

Sd/-
(R. Muralidhar)
Member (Judicial)

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

Pooja