IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75732 of 2016

(Arising out of Order-in-Appeal No.15/KOL-IV/12 dated 16.02.2016 passed by Commisioner of Central Excise, (Appeal-II), Kolkata.)

M/s. Pagoda Enterprise
(Now Pagoda Engineering Pvt.Ltd.)
(150/A, Garji Delhi Road, P.O. Bighati, Bhadreswar, Dist: Hooghly, Pin-712124.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-IV

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Kiran Shankar Chakraborty, Consultant for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77570/2024

DATE OF HEARING : 25.09.2024
DATE OF DECISION : 25.09.2024

Per : R. MURALIDHAR :

The Appellants have manufactured Operator's Cabin valued at Rs.5,70,000.00 and cleared the same to M/s. Udupi Power Corporation Ltd. on account of Lanco Infratech Ltd.. The Appellants claimed exemption under Notification No.06/2006 dated 01.03.2006 (Sl.No.9) and hence did not pay Excise Duty of Rs.58,710/- for this clearance. The exemption granted under Notification No.21/2002-CUS dated 01.03.2002, is in respect of goods supplied to Thermal Power Plant with a capacity of 1,000 MW or more. In the present case the power plant had the capacity of 507.5 MW each and hence on the ground that the Appellant is not eligible for exemption, Show Cause Notice was issued. After due process, the Adjudicating authority confirmed the demand. On appeal the Commissioner(Appeals) dismissed their Appeal. Hence the present Appeal before the Tribunal.

2. Ld.Consultant appearing for the Appellant produces a copy of the letter issued by Chief Executive Officer of M/s. Udupi Power Corporation vide reference No.UPCL/HOPAC/33/13 dated 22.01.2010 that the name of the present Appellant is also part of the project. He also produced a copy to the effect that the total mega project is to the extent of 1015 MW and appropriate Ceritificate has been issued to the effect that both the units of 507.5 are part of the same project.

2. The Ld.Consultant submits that the issue as to whether the exemption can be claimed when there are two thermal projects of 500 MW each is no more *res integra*. The Hyderabad Bench of the Tribunal in the case of **Thermopads Pvt.Ltd. vs. Commissioner of Central Tax, Medchal-GST vide Final Order No.A-30414/2023 dated 05.12.202**3 had held in their favour. In this case it has been held that the sub-contractor is also eligible to get the benefit of the exemption Notification. Therefore, he prays that the present Appeal may be allowed.

3. The Ld.AR for the Department reiterates the findings of the lower authorities.

4. We have gone through the documentary evidence and find that the total project consists of two thermal plants of 507.5 each, if put together, would exceed 1,000 MW specified in the Notification. Therefore, we find that the requirement of the conditions specified in the Notification No.21/2002 dated 01.03.2002 has been made by the Appellant.

5. The Hyderabad Bench in the case of **Thermopads Pvt.Ltd.**, cited supra, has held as under :

> *"10. The main issue to be decided is whether the Appellants were eligible for the exemption under Notification No. 6/2006-CE, dated 01.03.2006 or otherwise. It is an admitted fact that they have cleared the goods on 6 Appeal No. E/658/2012 instruction from M/s BHEL, who is a contractor who has been awarded the contract for certain work under ICB route by the Simhadri Super Thermal Power Project, Stage-II (2 x 500 MW) and NTPC Tamilnadu Energy Company Ltd., (a joint venture of NTPC Ltd., and TNEB). It is also an admitted fact that these*

two Power Projects have been duly granted necessary status as MPP by the Ministry of Power. It is also an admitted fact that the Appellants have submitted Project Authority Certificate issued to the main contractor by these projects as also letter from the Ministry of Power to MPS Simhadri Stage – II Power Project (2 x 500 MW) by NTPC and TNEB in Tamil Nadu. They also submitted amendments made to the Project Authority certificates including their name as sub-contractors for aforesaid projects/supplies.

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16. We have perused the records and the documents submitted by the Appellants. Certificate dated 04.04.2008 has been issued by the General Manager, Simhadri Super Thermal Power Project, who has been duly authorised to issue certificate certifying that M/s BHEL, Neyvelli have been .awarded a contract for supply of goods to power projects in India under the procedure of ICB. They have also specified that this is for supply of goods for SSTPP Stage-II (2x500 MW). There is also a certificate issued by Ministry of Power to NTPC certifying that Simhadri Stage-II (1000 MW), being set up by the NTPC in Andhra Pradesh is a Thermal Power Project of capacity of 1000 MW or more. It also certified that the power purchasing states have constituted Regulatory Commissionerate with full powers to fix tariff.

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19. Therefore, a holistic appreciation of all these documents will clearly indicate that the supplies made by the Appellants were for the projects, meets all the stipulated criteria specifically awarding of contract under ICB route. Further, there is a provision for supply through sub-contractor also, even though the sub-contractor might not have directly participated in the process of ICB for getting the contract, which was obtained by the main contractor namely BHEL in this case. It is also now clear that both these projects were Mega Power Projects in terms of certificates issued by the Ministry of Power and that these two projects would have been entitled for exemption under Customs Notification No. 21/2002-CU (serial no. 400). The wordings in the certificate issued by the Ministry of Power clearly matches with the wordings at serial no. 400 of this Notification.

Therefore, in the facts of the case, they are meeting the criteria for availing the exemption under Notification No. 6/2006. Accordingly, no duty is leviable on clearances made to these two projects through the main contractor M/s BHEL. Since the duty is not leviable, the penalty is also not imposable on the Appellants.

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21. Accordingly, the appeal is allowed with consequential benefits, if any, as per law."

6. The factual details combined with the ratio laid down in the above case law, clarifies that the impugned order is legally not sustainable and is therefore set aside.

7. 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/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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