IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/1104 to 1106/2009

(Arising out of Order-in-Appeal No.YDB/25 to27/M-III/1009 dt. 13.08.2009 passed by the Commissioner of Central Excise (Appeals), Mumbai-II)

Exide Industries Ltd. : **Appellant**

VS

Commissioner of Central Excise, Mumbai-II : **Respondent**

<u>Appearance</u>

Shri Rajesh Ostwal, Advocate for Appellant
Shri H.M. Dixit, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 03/04/2018
Date of pronouncement : 13/04/2018

ORDER NO. A/86027-86029/2018

Per : Ramesh Nair

The facts in brief are that the appellants are engaged in the manufacture of Electronic Storage Batteries and had supplied the same to India Navy without payment of duty under Notification No. 64/95-C.E. dt. 16.3.1995. The case of the department is that against each set of batteries 2 sets batteries (comprising of 240+4 cells), 4 additional cells are handed over by the appellant to the Quality Assurance Officer deputed at the assesse's factory premises. These 4 cells (referred to as test cells) are used for "life cycle test" and are not used for fitment to a submarine vessel including a Torpedo and Chariot of Indian Navy. The lower authorities held that exemption was not available to the aforesaid test cells of the batteries. Therefore the present appeal.

2. Shri Rajesh Ostwal, Ld. Counsel appearing on behalf of the appellant submits that the 4 additional cells even though, the used as test cells but finally total 248 cells were supplied to the Indian Navy. He submits that for entire 248 cells the Naval authority has issued a certificate in terms of Notification No. 64/95-CE dt. 16.3.1995. Supplies made to Indian Navy on the condition of production of certificate from the Indian Navy and the same has been complied with therefore the exemption cannot be denied. He placed reliance on the following judgments:

(i) *Commissioner of Central Excise, Mumbai-II Vs. Standard Batteries Ltd.*
2005 (184) ELT 42 (Tri.-Mumbai)

(ii) *Waxpol Industries Ltd. Vs. Commissioner of C. Ex., Jamshedpur*
2000 (126) ELT 1001 (Tribunal)

(iii) *Hindustan Unilever Ltd. Vs. Commissioner of C.Ex., Pune-II*
2017 (350) ELT 283 (Tri.-Mumbai)

(iv) *Commissioner of Central Excise, Chandigarh Vs. Dabur India Ltd.*
2005 (182) ELT 185 (Tri.-LB)

(v) *Commissioner of Central Excise, Bhopal Vs. Bhansali Engg. Ploymers*
2001 (137) ELT 60 (Tri.-Del.)

(vi) *J.K. Industries Ltd. Vs. Commissioner of C. Ex., Jaipur-II*
2003 (156) E.L.T. 437 (Tri.-Del.)

(vii) *Commissioner of C. Ex., Hyderabad-IV Vs. Gulf Oil Corporation Ltd.*
2007 (213) ELT 380 (Tri.-Bang.)

(viii) *Central India Polyester Ltd. Vs. Commissioner of Central Excise, Nagpur*
Order No. A/89838-89840/17/EB dt. 28.8.2017

3. Shri H.M. Dixit, Ld. Assistant Commissioner (A.R.) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submissions made by both the sides, we find that there is no dispute that though the 4 cells are treated as test cells by the Quality Assurance Officer in the factory premises of the appellant but the entire 248 cells were supplied to Indian Navy. It is also observed that the appellant have issued invoices for entire 248 cells, the India Navy also issued certificate dt. 28.8.2001 which is scanned below:

(60)

REGISTERED

Government of India
Ministry of Defence
Director of Procurement,
Naval Headquarters,'C' Wing
Sena Bhawan,
NEW DELHI : 110 011

No. : DPR / 015030

Date : 28 Aug., 2001

Dear Sir,

CERTIFICATE

The under mentioned item purchased from M/s. Exide Industries Limited, Kanjurmarg, Mumbai vide order No. DPR/ 31/015030/01 DAC0101 dated 28 Aug., 2001 is purchased exclusively for use on board Indian Navy Ships and may be exempted from Excise Duty.

Description	Quantity
Submarine battery Type III for 12500Ah capacity	01 set (1 set consisting of 152 + 8 cells)

2. Excise Duty Notification No. 64/95-CE dated 16/03/95 pertaining to goods specified at serial 3 & 12 of Table annexed relevant.

28-08-01

(S.R. Venkataramana)
Naval Store Officer

PLACE : NEW DELHI

SEAL :

From the above certificate, it is clear that the 8 cells which were treated as testing cells were also supplied to Indian Navy and the certificate for duty exemption was issued for the total quantity under Notification No. 64/95-CE dt. 16.3.95. We also perused the certificate of Quality Assurance Officer dt. 27.6.2006 which is scanned below:

ANNEXURE- 37

~~146~~

87945

136

Gram : QUALSUB
Tele : 022 25781566/ 2577 3877
Fax : 022 25783695 (c/o. Exide)
Email : qaeub@vsnl.com

GOVERNMENT OF INDIA
MINISTRY OF DEFENCE (DGQA)
QUALITY ASSURANCE ESTT.
(UNDERWATER BATTERIES)
C/O EXIDE INDUSTRIES LTD.
KANJURMARG (EAST)
MUMBAI – 400 042.

TO WHOMSOEVER IT MAY CONCERN

This is to certify that, the cells retained in the custody of Quality Assurance Office in Exide Factory – Kanjurmarg premises are the property of the Indian Government – Indian Navy and are integral part of the Battery supplied / commissioned on board the Indian Submarines. The details of the Test Cells are placed at enclosure for ready reference. Also it is intimated here that, the Test Cells are also used to replace the cells on board from time to time for number of reasons when electrical performance of some cells found lagging, damage, accidents etc. on board. Further, these are accounted for during the final decommissioning and disposal of the respective set of batteries after completion of life on board.

File : QAE(UB)/SUB BATT /600

Date : 27 Jun 06

(S SAIRAM)
COMMANDER
QUALITY ASSURANCE OFFICER

From the above certificate it is clear that the test cells are also used by the India Navy. Therefore the fact is not under dispute that even though the 4 number of cells in 1 set of 244 are meant for quantity test in the factory of the appellant but it is established that these test cells were also supplied to Indian Navy. Therefore the exemption Notification No. 64/95-CE cannot be denied. We have gone through the judgment of Standard Batteries Ltd. (supra) wherein the similar issue was involved the Tribunal held that *"in respect of Battery Type Upg-125 for Foxtrot Class of submarines, there are 460 cells out of which 448 are used at a time on board the submarine. Four cells are kept at Energy Block, as spares and remaining 8 cells are also spares, which are to be used for replacement purpose. All Cells get used on board much before the life of their main counterpart cells. This is on the basis of the letter dt.26.4.1991 of the Ministry of Defence. It is therefore clear that the Test Cells are also supplied as ship stores for consumption on board a vessel of the Indian Navy. Hence the benefit of Notification No.70/77-CE has rightly been extended to them."* Though in the present case the relevant Notification No. is 64/95-CE but the exemption entry is *pari materia* and the issue is identical that the test cells whether to be considered for exemption. Therefore the ratio of this judgment is applicable in the present case. As per our above discussion the impugned orders are set aside. The appeals are allowed.

(Pronounced in court on 13/04/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.