

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.1

Appeal No.E/184/2011

[Arising out of Order-in-Appeal No.711 to 713/RGD/2010, dt.28.10.2010, passed by the Commissioner (Appeals), C.Ex., Mumbai]

M/s Maharashtra Seamless Ltd

.....Appellant

Pipe Nagar, At Sukeli, Tal.: Roha,
Raigad 402 109

VERSUS

Commissioner of Central Excise, Raigad

.....Respondent

Utpad Shulk Bhavan, Plot No.1,
Sector-17, Khandeshwar,
Navi Mumbai 410206

Appearance:

Shri T.C. Nair, Advocate for the Appellant

Shri Ajay Kumar, Addl. Commissioner (A.R.) for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

HON'BLE MR. SANJEEV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.A/85880/2019

Date of Hearing: 16.11.2018

Date of Decision: 13.05.2019

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.711 to 713/RGD/2010, dt.28.10.2010, passed by the Commissioner (Appeals), C.Ex., Mumbai.

2. Briefly stated the facts of the case are that the Appellant during the relevant period from August 2006 to September 2006, has despatched 4807.05 Mtrs of seamless pipes to M/s Hydril Jindal International Pvt. (M/s HJIPL) without payment of duty on the basis of project authority certificate issued to the Appellant. The

clearances were made without payment of duty by availing exemption Notification No.6/2006-C.E., dt.1.3.2006. Alleging that the Appellant is not eligible to the benefit of Notification No.6/2006-C.E., dt.1.3.2006 since the goods were not supplied directly to the contractor, duty amounting to Rs.11,18,208/- was demanded with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

3. At the outset, the learned Advocate for the Appellant has submitted that they have complied with the condition of Notification No.6/2006 -C.E., dt.1.3.2006, inasmuch as that the seamless pipes have been supplied to M/s HJIPL, sub-contractor of M/s Jubilant Oil & Gas Ltd, who were awarded the contract for exploration of oil and gases by the Government of India against Contract No.CY07PO0013, dt.18.04.2016. The supplies were made against the said contract by the Appellant which in turn certified by M/s Jubilant Oil & Gas Ltd. It is their contention that merely because the goods were not directly supplied to the main contractor, would not disentitle them from availing the benefit of exemption Notification No.6/2006-C.E., dt.1.3.2006 for the clearances made to said projector. He submits that there is no dispute of the fact that the supplies were made as per the project authority certificate, dt.29.02.2008 and there is no dispute of the fact that the goods were used in the project. The supplies made by the Appellant, therefore, eligible to exemption under Notification No.6/2006-C.E., dt.1.3.2006. In support, the learned Advocate referred to the judgment of this Tribunal in the

case of Toshniwal Industries Pvt. Ltd Vs CCE Jaipur-II – 2017 (5) G.S.T.L. 179 (Tri-Del.), Sarita Steels & Industries Ltd Vs C.C.Ex. Visakhapatnam – 2011 (264) ELT 313 (Tri-Bang.), CST Ltd Vs C.C.E., Hyderabad-I – 2007 (217) ELT 513 (Tri-Bang.), IBM India Pvt. Ltd Vs C.C.E., Ponicherry – 2008 (223) ELT 429 (Tri-Chennai).

4. The learned A.R. for the Revenue reiterates the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records. There is no dispute of the fact that the main contractor M/s HJIPL has supplied the goods against international competitive bidding to M/s Jubilant Oil & Gas Ltd in respect of oil exploration of Cauveri block. The project authority certificate was issued in the name of M/s HJIPL, who in turn, procured the material from the Appellant, on the strength of the said project authority certificate. The quantity and quality of seamless pipes mentioned in the said project authority certificate has been undisputedly supplied by the Appellant to M/s HJIPL. The sole reason for denying the benefit of said exemption to the Appellant is that the supplies were not made by them directly through international competitive bidding; also they have not satisfied the condition No.19 appended to the said notification. In our view, the supply of the goods to the project in the present circumstances cannot disentitle them from the benefit of notification, as held in number of cases including the case of Toshniwal Industries Pvt. Ltd (supra). On similar facts and circumstances, considering exemption under the same notification, the Tribunal, following the earlier judgment observed as follows:-

"6. After hearing both sides and on perusal of record, it appears that the Tribunal has decided (supra) that it is not necessary that the manufacturer supplying the goods to the mega power projects should have participated in International Competitive Bidding so long as the goods are supplied to such contract was awarded to a person who took part in the International Competitive Bidding and it is proved that the goods were in fact supplied to such power project and the equipments were installed at the project site. What we noticed is that neither the benefits under Notification No. 21/2002-Cus. (Sr. No. 400) nor the exemption under Notification No. 6/2006-C.E. (Sr. No. 91) is subject to any conditions stipulated in Foreign Trade Policy. BHEL as the main contractor could have imported the impugned goods without payment of Customs duty in view of Notification No. 21/2002-Cus. (Sr. No. 400). Notification No. 6/2006-C.E. Sr. No. 91 only makes it possible to procure such goods locally without payment of excise duty if BHEL so desires and BHEL opted for local procurement from the assessee-appellants. So, naturally the assessee-appellants should be eligible for exemption under Notification No. 6/2006-C.E. (Sr. No. 91). *Prima facie*, the deemed export benefits dealt within para 8.6.1 and 8.6.2 deal with incentive granted by DGFT and not exemption granted by Ministry of Finance and there is no reason to refer to those conditions so long as they are not referred to in the Notification claimed. The main point to be noticed is that relief from excise duty is not granted through the mechanism of deemed export but administered through exemption notification issued. We note that Revenue has not made any case that any of the conditions specified in the exemption notification is not fulfilled. It is already decided by the Tribunal (supra) that exemption cannot be denied for the reason that sub-contractor did not take part in International Competitive Bidding."

6. We do not find any reason to deviate from the above judgment, in absence of any contrary evidence to the fact that the pipes in question had not been supplied to the project and used in the project.

7. In the result, the impugned order is set aside and the appeal is allowed.

(Order pronounced in the open court on 13.05.2019)

(D.M. Misra)
Member (Judicial)

(Sanjeev Srivastava)
Member (Technical)