CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH – COURT NO. 4

Excise Appeal No: 1033 of 2011

[Arising out of Order-in-Appeal No: PKS/552-554/BEL/2010 dated 28th March 2011passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Hercules Hoists Ltd … ***Appellant***
110 Minerva Industrial Estate, LBS Marg,
Mulund (W), Mumbai – 400 080

versus

Commissioner of Central Excise …***Respondent***
Mumbai – II
4th Floor, Vardaman Trade Centre, MIDC
Wagle Industrial Estate, Thane (W) – 400 604

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri S Hasija, Superintendent (AR) for the respondent

WITH

Excise Appeal No: 1034 of 2011

[Arising out of Order-in-Appeal No: PKS/552-554/BEL/2010 dated 28th March 2011passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

M S Saigal … ***Appellant***
C/o M/s Hercules Hoists Ltd
110 Minerva Industrial Estate, LBS Marg,
Mulund (W), Mumbai – 400 080

versus

Commissioner of Central Excise …***Respondent***
Mumbai – II
4th Floor, Vardaman Trade Centre, MIDC
Wagle Industrial Estate, Thane (W) – 400 604

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant

Shri S Hasija, Superintendent (AR) for the respondent

AND

Excise Appeal No: 1088 of 2011

[Arising out of Order-in-Appeal No: PKS/552-554/BEL/2010 dated 28th March 2011passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Nishant P Saigal … ***Appellant***
A-6/12 Flat No.23, LIC Colony, Jivan Bima Nagar
Borivli West, Mumbai – 400 103

versus

Commissioner of Central Excise ***…Respondent***
Mumbai – II
4th Floor, Vardaman Trade Centre, MIDC
Wagle Industrial Estate, Thane (W) – 400 604

APPEARANCE:

Shri Raymond George, Advocate for the appellant

Shri S Hasija, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86476-86478/2019

DATE OF HEARING:	10/04/2019
DATE OF DECISION:	26/08/2019

PER: C J MATHEW

These appeals arising from order-in-appeal no. PKS/552-

554/BEL/2010 dated 28th March 2011 of Commissioner of Central Excise (Appeals), Mumbai – III are challenges to the confirmation of demand of ₹ 17,90,141/-, arising from the denial of exemption notifications pertaining to three different business activities, and the imposition of other detriments therefrom on M/s Hercules Hoists Ltd and two executives of the appellant-company and are disposed off by this common order.

2. We have heard Learned Counsel for the appellants and Learned Authorised Representative at length.

3. One of the demands was a consequence of the finding of ineligibility to avail the benefit of notification no. 63/1995-CE dated 16th June 1995 (at serial no. 1 and serial no. 2) intended to exempt supplies made to Ministry of Defence by specified organisation. The second demand followed denial of exemption extended by notification no. 03/2004-CE dated 8th January 2004 to goods required for setting up of ‘water supply plants and pipes’ to deliver water from source to the ultimate storage facility. The third portion follows from the finding of ineligibility for exemption under notification no. 6/2006-CE dated 1st March 2006, which itself is contingent upon parallel provisions in notification no. 21/2002-CE dated 1st March 2002 intended to confer non-discriminatory treatment to goods

manufactured in India and to those imported for execution of projects contracted through international competitive bidding.

4. The impugned order has held against the appellant-company on the ground that the supplies made to M/s Bharat Earth Movers Ltd, though listed as eligible in notification no. 63/1995-CE dated 16th June 1995 are not eligible in the absence of the name of the assessee from the enumeration. It would appear that the issue stands settled by the decision of the Hon'ble High Court of Karnataka in *Commissioner of Central Excise, Bengaluru – V v. Datasol Innovative Labs [2017 (349) ELT 13 (Kar.)]* and that the decision relied upon in the impugned order has since been overruled by the Hon'ble High Court of Rajasthan in *National Engineering Industries Ltd v. Commissioner of Central Excise – I, Jaipur [2017-TIOL-2445-HC-RAJ-CX]*. Accordingly, the eligibility of appellant-company for exemption on goods supplied to M/s Bharat Earth Movers Ltd, which are, in turn, intended for Ministry of Defence is no longer *res integra*. This portion of the demand is, therefore, to be set aside.

5. It is seen from the rival contentions that, in relation to the exemption intended for water supply plants, the denial arose from the deficiency of the certificate issued by the competent head of the district. The lower authorities have held so in the absence of a

substitute certificate for the one that was misplaced by them while shifting their office. However, it is the plea of the Learned Counsel for the appellant that this is not the correct factual position inasmuch as the certificates had been submitted to the appropriate central excise authorities who were unable to trace the same. In the light of the submission, it is only proper that the original authority makes an effort to recover the said documents and render a finding thereafter on the eligibility thereof. In the absence of such certification, it was inappropriate for the lower authority to come to a conclusion that the appellant-assessee was not eligible for the exemption.

6. As far as the condition prescribed in notification no. 06/2006-CE dated 1st March 2006, relating to supplies made in connection with the projects undertaken after international competitive bidding, is concerned, the limited contest is on conformity with the conditions in the notifications and that the certification insisted upon by the lower authorities is not mandated therein. It is also submitted that the furnished certificate did contain details sufficient to evince eligibility for benefit of the notification. It would appear that the lower authorities had not paid due attention to the conditions prescribed and the required level of compliance.

7. In view of the above, we set aside the demand pertaining to

supplies effected to M/s Bharat Earth Movers Ltd and, on the remaining points in dispute, remand the matter back to the original authority for a fresh decision on the lines indicated *supra*.

(Order pronounced in the open court on 26/08/2019)

(C J Mathew)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

**/as*