CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 1671 of 2012

(Arising out of Order-in-Appeal No. BC/206/M-III/2012-13 dated 31.07.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s. Blue Star Ltd. **Appellant**
2nd Pokhran Road,
Majiwada, Thane (W) 400 601.

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

Appearance:

Shri P. Krishnan, Advocate, for the Appellant
Shri P.K. Acharya, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 08.02.2023
Date of Decision: 08.02.2023

FINAL ORDER NO. 85816/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against order in appeal No BC/206/M-III/2012-13 dated 31.07.2012 of the Commissioner (Appeals) Central Excise, Mumbai III. By the impugned order following has been observed:

"2. Brief facts of the case are that the appellants are engaged in the manufacture of goods falling under Chapter 84 of first schedule of Central Excise Tariff Act, 1985, have cleared goods at Nil rate of duty to M/s. Reliance Infrastructure Ltd, Mumbai to be used in Raghunathpur Thermal Power Project after availing the benefit of Notification No. 6/2006-CE dated 01.03.2006 at Sr. No. 91 read with condition 19. The said condition 19 appended to S.No.91 of the said Notification, provides that " If the goods are exempted from the duties of the Customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act, when imported into India." But the said appellants had imported inputs namely Compressor, Copper Tube etc, on payment of Customs duty, required for manufacture of their final product. Hence, they have contravened the provisions of Notification No. 6/2006 dt 1.3.2006. Also the appellant did not submit a certified copy of the Project Authority Certificate in Appendix-27 showing the name of the show cause notice dated appellant as sub-contractor. Hence, a 16.09.2011 was issued which later culminated into the impugned order.

3. Being aggrieved, the appellants filed the above appeal on the following grounds of appeal, along with stay application. The grounds of appeal are as under:

a. Section 11A is not applicable to the case as the departmental officers, quasi-judicial officers in themselves, had permitted and allowed consciously the supply of material after verifying all the records submitted to them.

b. SCN is hit by limitation. Letters mentioning use of Notification No. 6/2006 dt 1.3.2006 was delivered to the Asst. Commissioner of Central Excise, before the dispatch of goods i.e. 29.6.2009. Hence, the appellants have been allowed to clear goods without payment of duty under the said Notification.

c) Goods cleared during the impugned period was allowable under Notification No.6/2006-CE dtd 01.03.2006 and they have relied on the following judgments in this regard :-

(i) CST Ltd vs CCE, Hyderabad-2008(230) ELT85 (Tri-Bang)

(ii) CST Ltd vs CCE, Hyderabad-2007(217)ELT513(Tri-Bang)

d. Interest not leviable and penalty not imposable.

The issue is in the appeal is related to benefit of availment of Notification No. 6/2006 dt. 1.3.2006.

The relevant portion of Notification No. 6/2006 reads as under:

Exemption and effective rate of duty for specified goods of Chapters 84 to 98

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table given below read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading or sub-heading or tariff item of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), as are given in the corresponding entry in column (2) of the said Table, from so much of the duty of excise specified thereon under the First Schedule to the Central Excise Tariff Act, as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table and subject to the relevant conditions specified in the Annexure to this notification, and condition number of which is referred to in the corresponding entry in column (5) of the Table aforesaid:

S. No.	*Chapter*	*Excisable goods*	*Rate*	*Condition No.*
91	*Any Chapter*	*All goods supplied against International Competitive Bidding*	*Nii*	*19*

The Condition 19 reads as under:

19. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India.

6. Having claimed the above exemption notification, the onus is on the appellant as to how they are entitled to avail the said exemption notification. The appellants have not made any submissions as to how they were entitled to the benefit or how they have fulfilled the conditions of notification. Even at the appellate stage, they have not produced any evidence or documents in support of eligibility under Notification No. 91/2004-Cus dated 10.09.2004. They have not submitted certified copy of Project Authority Certificate certifying that the *said goods are meant for a project approved by the International Competitive Bidding. It is a settled law that to avail the benefit of the exemption notifications, the conditions required therein are to be fulfilled. In the case of International Engg. & Mfg. Services Pvt Ltd Vs Commissioner of Central Excise, Jaipur [2001 (135) E.L.T. 551 (Tri. - Del.)], it has been held that Notification No. 214/86-C.E. is a conditional notification and the benefit of the notification will be available only on fulfilment of the conditions specified therein. It has been held in the case of Sterlite Industries (I) Ltd Vs Transmission Vs Transmission Corporation of Andhra Pradesh Ltd. [2005 (189) E.L.T. 266 (A.P.)] that conditions prescribed for grant of exemption are mandatory for Before granting any exemption it should be availing the exemption established that the conditions prescribed thereof in the exemption provisions are satisfied. The case laws relied upon by the appellants are not squarely applicable to the instant case as the appellants themselves have not fulfilled the conditions laid down in the said notification. Hence, duty is recoverable under Section 11A of the Central Excise Act, 1944. Where duty is recoverable under Section 11A, interest is recoverable under Section 11AB of the said Act."*

2.0 We have heard Shri R Krishnan, Advocate for the appellant and Shri P K Acharya, Superintendent Authorized Representative for the revenue.

3.0 Undisputedly the goods in the present case have been supplied to a project approved by International Competitive Bidding. Appellant has submitted the copy of the letter of the project authority in support of his contention that the goods were supplied to project approved by the International Competitive Bidding. The same is reproduced below:

F.No.3/3/2006-DVC
Government of India
Ministry of Power
(DVC Desk)
:::

Shram Shakti Bhavan, Rafi Marg,
New Delhi, the 4th August, 2008

To

Shri A.K. Barman,
Chairman,
Damodar Valley Corporation,
DVC Tower, VIP Road,
KOLKATA-700 054.

Subject: **Mega Power Status to the Raghunathpur TPS: Phase -I (2x500+20% MW).**

Sir,

I am directed to refer to your letter No.RD/RTPS/172/674 dated 9th April, 2008 on the subject cited above and to enclose a copy of the requisite certificate (in original) duly signed by Joint Secretary (Thermal) to grant mega status in respect of Mega Power Status in respect of Raghunathpur TPS: Phase -I (2x500+20% MW), for appropriate action.

Enclose: as above

Yours faithfully,

(Puneet K. Goel)
Director (Thermal)
Tel No.2371 1394
Fax No.2335 6650

Copy forwarded to
Dir(Tech.), DVC, Kolkata.
PS to CHM 7/8/08

TRUE COPY
ATTESTED BY ME
S. C. GHOSH, Notary
Govt. of India
Reg. No. 925/97
30 OCT 2009

F.No.3/3/2006-DVC
Government of India
Ministry of Power
....

Shram Shakti Bhavan, Rafi Marg,
New Delhi, dated, the 4th August, 2008

TO WHOM IT MAY CONCERN

a) Certified that Raghunathpur TPS Phase-I (2x500+20%)being set up by Damodar Valley Corporation(DVC) is an Inter-state thermal power plant of capacity of 1000 MW + 20%.

b) Certified that (i) the power purchasing States have constituted the Regulatory Commissions with full powers to fix tariff; (ii) that the power purchasing States undertake, in principle, to privatize distribution in all cities, in that State, each of which has a population of more than one million, within a period to be fixed by the Ministry of Power.

पी. वी. जॉय/V. P. JOY
संयुक्त सचिव/Joint Secretary
JOINT SECRETARY TO THE GOVERNMENT OF INDIA
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi.

BASIS

(i) Confirmation of compliance of the Haryana State Government with the terms and conditions of the Mega Power Policy of Government of India have been received vide Memo No.16/6/2006-4 Power 20th February 2008 from the Financial Commissioner & Principal Secretary to Government, Haryana.

(ii) Confirmation of compliance of the Jharkhand State Government with the terms and conditions of the Mega Power Policy of Government of India have been received vide letter No.472 dated 28.2. 2008 from Shri Aditya Swaroop, Secretary, Energy Department, Government of Jharkhand.

(iii) Confirmation of compliance of the Punjab State Government with the terms and conditions of the Mega Power Policy of Government of India have been received vide Memo No.10/12/2008-PE2/1540 dated 25.1.2008 from Additional Secretary, Power.

Contd.....2

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TRUE COPY
ATTESTED BY ME

Compared by me
Advocate

S. C. GHOSH, Notary
Govt. of India
Reg. No. 92/07

30 OCT 2009

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(iv) Confirmation of compliance of the West Bengal State Government with the terms and conditions of the Mega Power Policy of Government of India have been received vide D.O. NO SP-1304/08 dated July 01, 2008 from Additional Chief Secretary, Department of Power & Non-conventional Energy Sources, Government of West Bengal.

(V.P. JOY)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA
वी. पी. जॉय/V. P. JOY
संयुक्त सचिव/Joint Secretary
विद्युत मंत्रालय/Ministry of Power
भारत सरकार, नई दिल्ली
Govt. of India, New Delhi

3/3
Compared by MB
Advocate

TRUE COPY
ATTESTED BY ME

S. C. GHOSH, Notary
Govt. of India
Reg. No. 925/97

30 OCT 2009

RELIANCE Energy
Anil Dhirubhai Ambani Group

Reliance Infrastructure Limited
D-220
Sector-63
Noida-201 307 (U.P.), India
Ph. : +91 120 392 4500, 4501
Fax : +91 120 392 4792, 4766
www.rinfra.com

Annexure-I to Appendix-27

Ref No: ND/2010-11/EPC/DVCRTPP/PM/PAC-AC/5911
Dated: 24/11/2010

CERTIFICATE BY THE MAIN CONTRACTOR TO THE SUB-CONTRACTOR

It is certified that the LOI No. EDCON/11th Plan/RgTPs/Main Pkg/595 dated 29th February 2008 in respect of Raghunathpur Thermal Power Project (2x 600 MW) Phase-I has been awarded to M/s. Reliance Infrastructure Limited, A-2, Sector-24, NOIDA, UP-201301 as the Indian main contractor and M/s. Blue Star Limited, 2nd Pokhran, Majiwada, Thane, Maharashtra Pin code-400601, India as the sub-contractor, whose name is certified in the main contract. The description and quantity of the goods as described below to be supplied by the sub-contractor through his sub-contractor M/s. Blue Star Limited, 2nd Pokhran, Majiwada, Thane, Maharashtra pin code- 400601, India to the Project Authority or to be supplied by the sub-contractor to the main contractor is shown in the main contract and is in accordance with the relevant Policy/ procedure applicable to such contracts. It is further certified that the payment in respect of the goods to be supplied by the sub-contractor will be made directly by us.

PARTICULARS OF SUPPLIES TO BE MADE

(a) By the sub- contractor through his sub-contractor M/s. Blue Star Limited, 2nd Pokhran, Majiwada, Thane, Maharashtra pin code- 400601, India

Sl No.	Description of item(s) to be supplied	Quantity (Nos.)	Value (in INR)	CIF Content
1	**Water Cooled Chiller: Water Cooled Chiller # 350 (Nominal) TR (Flooded Chiller)**	2	8,055,236.00	Nil

It is also certified that no other similar certificate to any other party has been granted for the same supplies detailed above, under the same contract referred above.

Date: 24/11//2010
Place: Noida, UP

Signature: Mrityunjay Poddar
Name of the Authorized Signatory: Mr. Mrityunjay Poddar
Designation: Asst. Vice President
Name of the Main Contractor: Reliance Infrastructure Limited

RELIANCE INFRASTRUCTURE LTD. NOIDA

For RELIANCE INFRASTRUCTURE LTD.

Authorised Signatory

Registered Office : Reliance Energy Centre, Santa Cruz (E), Mumbai 400 055

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4. From the perusal of the above certificate we are convinced that the appellant have supplied the goods against the project approved by International Competitive Bidding. The goods supplied to the such projects are exempt from payment of Custom Duty, if imported from outside. In our view the conditions specified in the notification are fulfilled by in respect of these supplies. The only reason stated in the impugned order for denial of exemption is non production of the project authority

certificate, which has been produced. Hence in our view the demand made denying the exemption cannot be sustained.

5. In view of above we do not find any merits in the impugned order. Set aside the same.

5.0 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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