CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 88503 OF 2014

[Arising out of Order-in-Original No: 03/COMMR/M-III/DRM/2014-15 dated 4th July 2014 passed by the Commissioner of Central Excise, Mumbai – III.]

Crompton Greaves Ltd
(Transformer Division – T1)
Kanjurmarg (E), Mumbai – 400042 … ***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
Vardan Centre, MIDC, Wagle Industrial Estate
Thane (W) - 400604 …***Respondent***

APPEARANCE:

Shri Sachin Chitnis, Advocate for the appellant

Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 85853/2024

DATE OF HEARING: 06/03/2024
DATE OF DECISION: 05/09/2024

PER: C J MATHEW

In this appeal of M/s Crompton Greaves Ltd against order[1] of

[1] [order-in-original no. 03/COMMR/M-III/DRM/2014-15 dated 4th July 2014]

Commissioner of Central Excise, Mumbai – III, the limited issue, concerning recovery of ₹ 1,17,39,028/- under section 11A of Central Excise Act, 1944 along with applicable interest under section 11AA of Central Excise Act, 1944, pertains to non-compliance with the certification requirements, prescribed in notification[2] at serial no. 338, of clearances effected to M/s Lanco Infratech Limited for the commissioning of Anuppur Thermal Power Project by M/s MB Power (Madhya Pradesh) Ltd.

2. Proceedings commenced with issue of show cause notice for recovery of ₹ 1,18,19,369 for wrong availment of notification[3] on supplies effected to three power projects that ultimately came to be confirmed only in relation to those of M/s MB Power (Madhya Pradesh) Ltd. The appellant was found to be non-compliant with the requirements of certification that said award of the 'mega power project' was not certified as having been through 'tariff based competitive bidding' as set out in the description of excisable goods at serial no. 338 and, further, that certification, prescribed in condition no. 43(d) in the said notification, for availment had not been issued by the proper officer.

3. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

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[2] [no.12/2012-Central Excise dated 17th March 2012]
[3] [no.12/2012-Central Excise dated 17th March 2012]

4. We find that the certificate issued by the Joint Secretary in the Ministry of Power did not include details of the manner in which the bid had been awarded. It was contended by the Learned Counsel for the appellant that this allegation had not been made in the show cause notice and, on perusal of the notice, we find this assertion to be correct. Furthermore, though the qualifying description of the project includes 'tariff based competitive bidding' the certificate prescribed in condition 43(a) is restricted to attestation of it be a 'mega power project'; the condition does not prescribe the certification as insisted upon by the adjudicating authority and it was for the adjudicating authority to establish that the project was ineligible on account of deficiency of such qualification. In the absence of such finding and, particularly, in the absence of such allegation in the show cause notice, there is no reason to hold that the certificate is inadequate.

5. The second deficiency pointed out was that the undertaking has to be issued by the 'chief executive officer' of the project whereas it had been signed by the 'Associate Vice President' of the appellant to which, according to the adjudicating authority, did not constitute a valid undertaking. We find that the adjudicating authority appears to have mis-construed 'chief executive officer' of the project with 'chief executive officer' of the company. It could possible that an 'Associate Vice President' could also be 'chief executive officer' of the project. No enquiry appears to have been made by the adjudicating authority before

concluding that the certificate has not been issued by the ‘chief executive officer’ of the project. In view of the allegation in the show cause notice that the certificate was improper it is incumbent that such ascertainment should have occurred.

6. In order to enable that, we set aside the impugned order and remand the matter back to the original authority for the limited purpose of requiring the notice to establish that the Associate Vice President was the ‘chief executive officer’ of the project.

7. The appeal is disposed off on the direction to limit the fresh adjudication to this aspect.

(Order pronounced in the open court on 05/09/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*