CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86834 OF 2014

[Arising out of Order-in-Appeal No: NSK-EXCUS-000-APP-350-13-14 dated 14th February 2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.]

Graphite India Ltd
Gut No. 523/524, Vill: Gonde, Tal: Igatpuri
Dist: Nashik … ***Appellant***

versus

Commissioner of Central Excise & Customs
Nasik
Kendriya Rajaswa Bhavan, Gadkari Chow,
Nasik - 422002 ***…Respondent***

APPEARANCE:

Shri Siddhanth Sriram, Advocate for the appellant

Shri Rajiv Ranjan, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 86140/2024

DATE OF HEARING: 05/04/2024
DATE OF DECISION: 03/10/2024

PER: C J MATHEW

This limited disputed, and of negligible value, relates to the clearance, between September 2012 to March 2013, of 'fittings (couplings of pipes)' emplaced on 'pipes' that, undisputedly, were eligible for exemption, on claim of similar eligibility in accordance with notification[1] which was denied by the original authority to order recovery of duties of central excise of ₹ 65,313/- under section 11A of Central Excise Act, 1944, along with appropriate interest under section 11AB of Central Excise Act, 1944, while imposing penalty of like amount under rule 25 of Central Excise Rules, 2002. The order[2] of Commissioner of Central Excise & Customs (Appeals), Nasik disposed off the challenge of assessee by affirming the said recovery and other detriment.

2. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

3. The claim of the appellant is that, for the period prior to that in dispute, they had been clearing the 'pipes' and 'couplings' separately and that, during the disputed period, they cleared the product after assembly. It is their claim that after such assembly, the new product continues to be 'pipes' intended to be benefitted of the said notification. According to Learned Authorized Representative, the tariff item for 'pipes' and that for 'couplings' differs owing to which the exemption notification specifying 'pipes' would not be applicable to the 'couplings' even if placed on the former. On perusal of the

---

[1] [no. 3/2004-CE dated 8th January 2013]
[2] [order-in-appeal no. NSK-EXCUS-000-APP-350-13-14 dated 14th February 2014]

notification[3], it is seen that there is no reference to the tariff item, sub-heading or heading therein and, therefore, there was no cause for ascertainment of the description in terms of the tariff item for determining eligibility to the notification. We also find that in their own dispute, the Tribunal in *Graphite India Ltd v. Commissioner of Central Excise and Customs, Nashik [2018-TIOL-889-CESTAT-MUM]* has held that, by virtue of clarification contained in notification[4], the two are to be construed as eligible for exemption.

4. In view of the decision of the Tribunal, there is no merit in the impugned order which is set aside to allow the appeal.

(Order pronounced in the open court on 03/10/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*

[3] [no. 3/2004-CE dated 8th January 2013]
[4] [no. 6/2011-CE dated 1st March 2006]