CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 88842 of 2013

(Arising out of Order-in-Appeal No. BR/187/Th.I/2013 dated 26.06.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I).

M/s Technocraft Industries (I) Ltd. **.... Appellant**
(Pipe Division), Plot No. M-A-4/1, MIDC Area,
Murbad, Thane - 421401

Versus

Commissioner of Central Excise, Thane-I **.... Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028

Appearance:

Shri Sachin Chitnis, Advocate for the Appellant

Shri P.K. Acharya, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87602/2024

Date of Hearing: 06.02.2024
Date of Decision: 06.02.2024

Per: S.K. Mohanty

Briefly stated, the facts of the case are that the appellants herein are engaged *inter alia*, in the manufacture of parts of Solar Power Generation Project viz., Pipes, Structure of Iron & Steel, Steel Strip & Angles, Tower Parts & Foundations Bolts, falling under Chapter Heading 72 and 73 of the Central Excise Tariff Act, 1985. During the disputed period, the appellants issued with a purchase order from the project developer M/s Louroux Bio Energies Ltd., for supply of foundation bolts/parts, for usage in initial setting up of solar power generation project in the State of Gujarat. The parts supplied for setting up a solar power generation project/facility are exempted from payment of Central Excise duty, in terms of Notification No. 15/2010-C.E. dated 27.02.2010. Grant of the duty exemption under such notification is subject to the condition that before clearance of the goods from the factory, the manufacturer of the excisable goods should submit a certificate issued from an officer not below the rank of Deputy Secretary to the Government of India in the Ministry of New and Renewable Energy, recommending the grant of exemption; and that the manufacturer of such goods furnishes undertaking to the Deputy Commissioner of Central excise or the Assistant Commissioner of Central Excise, having jurisdiction of the factory, to the effect that the said goods shall be used only in the approved project or facility and not for any other purpose. The other condition provided in the said notification is that in the event of failure to observe the conditions, the manufacturer shall pay the duty, which would have been leviable at the time of clearance of the goods, but for this exemption. For grant of exemption provided in the Notification dated 27.02.2010 (supra), the appellants did not comply with the condition of intimating the jurisdictional Central Excise authorities and accordingly, proceedings were initiated against them, seeking recovery of the Central Excise duty forgone on account of the exemption benefit claimed by them. The show cause notice issued in this regard was adjudicated upon by the Department vide order dated 14.02.2013, wherein central excise duty amounting to Rs.4,97,167/- along with interest demand was confirmed and also equal amount of penalty was imposed on the appellants under Rule 25 of the Central Excise Rules, 2002. On appeal against the said adjudication order, learned Commissioner (Appeals) vide the impugned order dated 26.06.2013 has upheld confirmation of the adjudged demand and rejected the appeal filed by the appellant. Feeling aggrieved with the impugned order dated 26.06.2013, the appellants have preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellants submitted that pursuant to the purchase order dated 8.11.2011 issued by M/s Louroux Bio Energies Ltd., the appellant had supplied mechanical parts etc., during the period between October, 2011 and January, 2012. He further submitted that the certificate was issued by the competent officer in the Ministry of New and Renewable Energy, New Delhi on 12.10.2011 and a copy of the said certificate was also endorsed to the office of the Deputy/Assistant Commissioner of Central Excise, Kalyan Division, Thane. Learned Advocate submitted that since the copy of the certificate dated 12.10.2011 had been endorsed by the competent authority in favour of the jurisdictional Central Excise authority, the appellants had genuinely believed that no separate

intimation regarding such certificate is required to be furnished for the purpose of Notification dated 27.02.2010 (supra). Thus, learned Advocate submitted that since the mandatory conditions laid down under Notification dated 27.02.2010 regarding issuance of certificate by the concerned ministry had been duly complied with, the benefit shall not be denied on the procedural infractions.

3. On the other hand, learned AR appearing for the Revenue reiterates the findings recorded in the impugned order and further submitted that since the notification dated 27.02.2010 had not been complied with in totality, the exemption benefit provided in the notification shall not be available and accordingly, the adjudged demands confirmed against the appellants are in conformity with the Central Excise statute.

4. Heard both sides and perused the case records.

5. Notification dated 27.02.2010 has granted exemption to various goods, required in initial setting up of a Solar Power Generation Project or facility. In the case in hand, it is not in dispute that M/s Louroux Bio Energies Ltd., were engaged during the material time in setting up of a Solar Power Generation Project and for that purpose, they had also applied for permission before the concerned officer, in the Ministry of New and Renewable Energy. Further, the said authority has also issued a certificate dated 12.10.2011, certifying that the goods to be procured by M/s Louroux Bio Energies Ltd., are required for installation/ setting up of the project or facility for power generation of solar energy. I also find that the copy of the certificate dated 12.10.2011 had also been endorsed by the Direction in the Ministry of New and Renewable Energy to the Central Excise Division office located in Kalyan, Thane. From the available records, it transpires that the appellants have supplied the goods for the intended purpose as itemized in the notification dated 27.02.2010. Since the appellants had failed to inform the central Excise Division Office regarding supply of the goods to the specified project, which was otherwise endorsed by the Ministry to the jurisdictional Central Excise authorities, it cannot be said that the appellants did not comply with the mandatory requirement of the conditions laid down in the notification dated 27.02.2010 (supra).

6. In view of the fact that the appellant had supplied the goods for the intended use by the project approved by the concerned Ministry, I am of the considered opinion that the benefit of exemption notification dated 27.02.2010 should be available to them. Therefore, I do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Accordingly, the impugned order is set aside and appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Sinha