CUSTOMS, EXCISE & SERVICE TA X APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86993 of 2016

[Arising out of Order-in-Appeal No. CD/159/M-II/2016 dated 26.02.2016 passed by the Commissioner of Central Excise (Appeals)]

KEC International Ltd. **.... Appellant**
6th Floor, Dr Annie Besant Road, Worli,
Mumbai- 400 030.

Versus

Commissioner of Central Excise, Mumbai-III **.... Respondent**
3rd & 4th Floor, Vardaan Centre, MIDC,
Wagle Industrial Estate, Thane (West)- 400 604.

APPEARANCE:

Shri Mehul Jivani, Chartered Accountant for the Appellant
Shri Ranjan Kumar, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/85248/2026

Date of Hearing: 22.01.2026
Date of Decision: 22.01.2026

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that during the disputed period, the appellants had cleared the excisable goods from their factory premises, without payment of Central Excise duty, upon claiming the benefit of exemption provided under Notification No. 06/2006-C.E. dated 01.03.2006. The appellants had claimed the benefit of such notification in respect of supply of goods made to M/s. Lanco Infratech Ltd., under the International Competitive Bidding (ICB). However, the benefit of duty exemption claimed by the

appellants under the said Notification dated 01.03.2006 was denied by the department on the ground that the condition prescribed in Entry No.91 of the said notification has not been fulfilled by the appellants. The original order dated 10.10.2013, denying the benefit of exemption was appealed against before the learned Commissioner (Appeals), which was upheld vide the impugned order dated 26.02.2016 and accordingly, the appeal filed by the appellant was dismissed. In support of such order, the learned Commissioner (Appeals) has held that the goods in question need to be exempted from Basic Customs Duty (BCD) and additional duty of customs (CVD); and that the appellants have failed to produce any undertaking issued by the CEO of the approved project to the jurisdictional Deputy Commissioner, to the effect that the said goods will be used only in the said project and not for any other purpose and in the event of non-compliance of such condition, the project developer would pay the duty, which would have been leviable at the time of clearance of goods, but for this exemption. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. The facts are not under dispute that the goods in question were supplied by the appellants to M/s Lanco Infratech Limited for Udipi Thermal Power Project, against International Competitive Bidding. The said fact has also been acknowledged by the learned Commissioner (Appeals) at paragraph 5 in the impugned order. However, he had denied the benefit of the notification dated 01.03.2006, on the ground that for availing the duty exemption under the said notification, the appellants have to fulfill the condition No.19, appended thereto, which states that "when imported into India" and that the said exemption only applies to importer of goods and not to domestic manufacturer of the said goods. On reading of the conditions itemized in the notification dated 01.03.2006 (supra), we find that the learned Commissioner (Appeals) has incorrectly interpreted the said phrase, to conclude that the benefit is only available to the importer of the goods and not to the manufacturer of such goods in India. The condition No.19 in the notification dated 01.03.2006 (supra) has not provided that the goods for which exemption is claimed, are required to be only imported by the domestic manufacturer. The said fact is evident in such condition itself, where the qualifying mark provided was that the goods when

exempted from BCD and CVD should also qualify for the exemption from payment of central excise duty. It is no doubt a fact that the goods in question supplied under ICB by the appellants are also exempted from payment of the duties of customs vide Serial No. 400 of the notification No.21/2002-Customs dated 01.03.2002. In other words, procurement of goods under ICB process, whether through imported or domestic sources, equal treatment should be given for both the categories inasmuch as such process under ICB is to enable level playing field for domestic manufacturer, to provide competitiveness.

4. We find that the issue arising out of the present dispute has been dealt with by the Co-ordinate Bench of the Tribunal in the case of *M/s Sandvik Asia Limited Vs. C.C.E. & S.T., Ahmedabad-III*, reported in 2019 (5) TMI 869 – CESTAT AHMEDABAD. By relying upon the order of the Tribunal in the case of *Kent Intro Pvt. Ltd. Vs. Commissioner of Central Excise* – 2014 (301) E.L.T. (84) (Tri.), upheld by the Hon'ble Bombay High Court, reported in 2016 (331) E.L.T. (77) (Bom.), the Co-ordinate Bench in the case of *Sandvik Asia Limited* (supra) has held that insofar as the appellant's supplies is against the ICB and the goods are exempted from customs duty, if imported into India, the appellant is entitled for the exemption provided under Notification No. 06/2006-C.E. dated 01.03.2006.

5. In view of the above discussions, we do not find any merits in the impugned order, insofar as it has confirmed the adjudged demands on the appellants. Therefore, impugned order is set aside and the appeal is allowed in favour of the appellants.

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM