Automatic Electric Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-27-2004

Reported in : (2004)(178)ELT524Tri(Mum.)bai

Judge : S T S.S., T Anjaneyulu

Appellant : Automatic Electric Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. Appellant, an assessee under Central Excise Act, 1964, claimed exemption under notification 108/95-CE dated 28.08.95 supplied to M/s.

BHEL who had placed the orders. M/s. BHEL in tern had to supply goods to National Thermal Power Corporation Ltd. (NTPC) project guaranteed by IBRD, International Monitoring Organisation. This claim was rejected on the grounds - that certificate required to be produced as per the notification from Nodal Ministry in the Government of India that goods are to be supplied to a project financed by the prescribed agency / organisation and the internal correspondence produced do not contain the required certificate.

"I find that the assessee's claim is unsubstantiated and therefore the exemption claimed vide notification No. 108/95 CE dated 28.08.95 is not admissible. The said notification stipulated that before clearance of the "said" goods, the manufacturer shall produce before the Assistant Commissioner of Central Excise, a certificate from the Nodal Ministry in the Government of India that the said goods are intended for official use by the said United National or the said International Organization or are to be supplied to a project financed by the said United Nations or the said International organisation and denied the benefit of the notification. Hence this appeal. " 3. After hearing both sides & considering the material on record, it is found a) "The relevant portion of Notification 108/95 CE as amended, reads as follow - "...... hereby exempts all goods falling under schedule to the Central Excise Traffic Act, 1985 (xx)xx when supplied to xxx or supplied to the projects financed by the said United nation or an International organisation & approved by the Government of India from while of- There is no conflict about the project of NTPC, for whom the appellant manufacturer is a sub contractor and M/s. BHEL the main contractor is an approved project. Supplies to such project are eligible to the benefit of the notification. The CCE (A) in his findings, accepted that the appellants figure in the contract between NTPC & BHEL. Therefore, the denial, on failure alleged on the ground to prove the goods were supplied in favour of BHEL have been delivered at site at Madhya Pradesh for use in the project find the project being financed by the prescribed organisation and approved by the Government as a World Bank Aided Project is not conclusively established.

b) CCE(A) are travelling beyond the notice issued. A perusal of the notice and the order of the Assistance Commissioner do not in decate these issues to be disputed. The show Cause Notice dated 30.07.98, in paragraph I clearly alleges "Whereas the condition in (SIC) laid down under Notification No.l08/95CE dated 28.08.98, are not fulfilled in as much as the certificate produced by the Assesses is not as per the requirement of the said notification".

ii) NTPC's order on BHEL in the form of Project Authority Certificate.

iv) Copy of Public Notice No. (E)/DAE dated 23.06.94 and 3 (FT)/ DEA dated 17.10.94 issued by department of Economics Affairs, Ministry of Finance.

to the Assistant Commissioner and a certificate from Under Secretary, Ministry of Power, certifying the project to be having approval of Government of India especially as regards the subject supply as per BHEL contract, d) Since goods supplied, are exempt, the certificates produced and the contract between BHEL &

NTPC, accepting the appellant to be a sub contract supplier, the project being an approved project as per Certificate of Ministry of Power, Government of India, then there is not reason to look for actual supply to site, as held by CCE (A). The contract made and its performance, nor doubted, will ensure that supplies eventually reach the project site. Denial of the benefit of notification 108/115 to the goods cleared pursuant to this contract of BHEL with NTPC is therefore not upheld.