

Dee Development Engineers Ltd. Vs. Union of India (Uoi) and ors.

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Court : Punjab and Haryana

Decided On : Feb-08-2010

Judge : Ashutosh Mohunta and; Mehinder Singh Sullar, JJ.

Appellant : Dee Development Engineers Ltd.

Respondent : Union of India (Uoi) and ors.

Disposition : Appeal dismissed

Judgement :

Mehinder Singh Sullar, J.

1. As per the brief, but relevant facts, emanating from the record, the appellant-assessee M/s Dee Development Engineers Limited (for brevity 'the assessee') is engaged in the manufacture of Accessories for Boilers and Tube of Pipe Fittings of Iron & Steel amenable to Central Excise Tariff Act, 1985. During the course of scrutiny of documents, it revealed that the assessee has cleared the goods valued at Rs. 32,82,765/-without payment of Central Excise Duty. Therefore, the notice dated 28.5.2002 (Annexure A6) was issued to the assessee, as to why exemption under Notification dated 28.8.1995 (Annexure A1), in respect of goods cleared, duty free, to M/s Thermax Babcock & Wilcox Limited, Pune be not denied to the assessee, Central Excise Duty amounting to Rs. 5,16,602/-under Section 11A of the Central Excise Act, 1944 (for short 'the Act') alongwith interest under Section 11AB of the Act and penalty should not be imposed under Rule 25 of the Central

Excise (No. 2) Rules, 2001.

2. The assessee filed the reply, inter-alia, explaining that M/s Thermax Babcock & Wilcox Limited, Pune awarded them the purchase order for the supply of Steam Generator and its accessories, directly to M/s Kakatia Cement Sugar and Industries Ltd., Hyderabad. The project of M/s Kakatia Cement Sugar and Industries Ltd. was entitled to procure duty free material in terms of Notification (Annexure A1) intended to be used in a project financed by International Organization approved by the Government of India. The Project Implementing Authority was stated to have duly issued a certificate, in this respect in favour of M/s Thermax Babcock & Wilcox Limited, Pune and it in turn had placed the order to the assessee for supplying the goods, directly to M/s Kakatia Cement Sugar and Industries Ltd. In all, according to the assessee, the benefit of Notification (Annexure A1), exempting the Excise Duty, is available to it, so the demand raised in the show cause notice (Annexure A6) was not justified.

3. The explanation put forth by the assessee did not find favour and the Adjudicating Authority denied the indicated benefit to it (assessee), confirmed the demand of duty of Rs. 5,16,602/-under Section 11A of the Act and imposed a penalty of Rs. 20,000/-alongwith interest, vide impugned order dated 2.4.2003 (Annexure A7).

4. Aggrieved by the impugned order (Annexure A7), the assessee filed the appeal, which was rejected by the Commissioner of Central Excise (Appeals), vide order dated 24.11.2003 (Annexure A10).

5. Still aggrieved by the impugned order (Annexure A10), the assessee filed the appeal, which was also dismissed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, vide order dated 30.7.2004 (Annexure A12).

6. The assessee still did not feel satisfied with the impugned orders (Annexures A7, A10 and A12) and filed the present appeal.

7. Assailing the impugned orders, the learned Counsel for the assessee has contended with some amount of vehemence that no doubt, the certificate dated

4.6.2001 (Annexure A2) was issued in the name of supplier M/s Thermax Babcock & Wilcox Limited, Pune, but the assessee had been awarded purchase order by M/s Thermax Babcock & Wilcox Limited, Pune for supply of steam generator and its accessories, directly to M/s Kakatia Cement Sugar and Industries Ltd. Therefore, it (assessee) is entitled to the benefit of contemplated exemption under the Notification (Annexure A1). The argument further proceeds that the Notification has to be construed keeping in view its practical aspect and public interest. In order to substantiate his contention, the learned Counsel for the assessee has placed reliance on judgments of Hon'ble Supreme Court in cases Union of India v. M/s Ranbaxy Laboratories Ltd. and Ors. : AIR 2008 Supreme Court 2286; Commissioner of Central Excise, Hyderabad v. Sunder Steels Ltd. : (2005) 3 Supreme Court Cases 363; Belapur Sugar and Allied Industries Ltd. v. Collector of Central Excise, Aurangabad AIR 1999 Supreme Court 1692; Novopan India Ltd. v. Collector of C. Ex. and Customs, Hyderabad : 1994 (73) E.L.T. 769 (S.C.) and Collector of Central Excise etc.etc. v. Neoli Sugar Factory etc. etc. : AIR 1993 Supreme Court 1921.

8. Hailing the impugned orders, on the contrary, the learned Counsel for the revenue urged that since the required certificate is not issued to the assessee, so it (assessee) cannot claim the benefit of Notification (Annexure A1) on the basis of certificate issued to M/s Thermax Babcock & Wilcox Limited, Pune, particularly when the Notification (Annexure A1) is clear in this connection.

9. In M/s Ranbaxy Laboratories Ltd.'s case (supra), it was observed that 'while construing an exemption notification not only a pragmatic view is required to be taken but also the practical aspect of it. A manufacturer would not know as to when the drug would be sold. It has no control over it. Its control over the drug would end when it is dispatched to the distributor. The manufacturer cannot supervise or oversee as to how others would be dealing with its product. All statutes have to be considered in light of object and purport of the Act.'

10. Sequelly, in Sunder Steels Ltd.'s case (supra), it was held that 'the notification has to be interpreted on its wording. No words, not used in the notification, can be added. To accept submission of the appellants one would have to read into the

notification words to the effect that 100% of the manufacture or production of ingots or billets or rolled products must be from products manufactured or produced within the same premises. No such words appear in the notification.' On the peculiar facts and circumstances of that case, it was observed that as all the four conditions were fulfilled, CEGAT was right in holding that the benefit of the notification was available.

11. Likewise, in Novopan India Ltd.'s case (supra), it was observed that 'exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State. But once the provision is found applicable, then full effect must be given to it.' Similar observations were made by the Hon'ble Apex Court in Belapur Sugar and Allied Industries Ltd. and Neoli Sugar Factory's cases (supra).

12. Possibly, no one can dispute with regard to the aforesaid observations of Hon'ble Supreme Court, but the same would not come to the rescue of the assessee in the present case, because there is no ambiguity in the Notification (Annexure A1) and in order to avail the exemption, all the terms and conditions mentioned therein are required to be fulfilled.

13. Thus, the core question for determination in this case is whether the assessee is entitled to the exemption of notification (Annexure A1) or not?

14. Having regard to the rival contentions of the learned Counsel for the parties and having gone through the record, we are of the view that the assessee is not entitled to the aforesaid exemption.

15. The bare perusal of the record would reveal that in exercise of powers conferred by Sub-section (1) of Section 5A of the Central Excise and Salt Act, 1944 read with Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Central Government exempts all goods falling under the Schedule to the Central Excise Tariff Act, 1985 when supplied to the United Nation or an International Organization for their official use or supplied to the project financed by the said United Nation or an International

Organization and approved by the Government of India on fulfillment of all the terms and conditions mentioned therein. Clause (c) of the Notification postulates that 'if the indicated goods are intended to be supplied to a project financed by the World Bank, the Asian Development Bank or any International Organization other than those listed in the annexure and if the said project has been approved by the Government of India, a certificate is required from the Executive Head of the Project Implementing Authority and countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned line Ministry in the Government of India, that the said goods are required for execution of the said project and the said project has duly been approved by the Government of India. Meaning thereby, the exemption of duty can only be claimed by the person if all the conditions of the Notification (Annexure A1) are fulfilled.

16. The argument of learned Counsel for the assessee that since M/s Thermax Babcock & Wilcox Limited, Pune had awarded a purchase order to the assessee for supply of steam generator and its accessories, directly to M/s Kakatia Cement Sugar & Industries Ltd., Hyderabad, so it (assessee) is entitled to the exemption clause on the basis of certificate issued in favour of M/s Thermax Babcock & Wilcox Limited, Pune, is not only devoid of merit, but misplaced as well, because it is not a matter of dispute that the certificate (Annexure A2) by Project Implementing Authority was issued in the name of supplier M/s Thermax Babcock & Wilcox Limited, Pune and not in favour of the assessee, authorizing it, to remove all the goods under the Notification (Annexure A1) and the goods were not supplied, directly to the project financed by Asian Development Bank. Therefore, there is no ambiguity in the Notification (Annexure A1) and contrary arguments of learned Counsel for the assessee 'stricto sensu' deserve to be and are hereby repelled in the obtaining circumstances of the case.

17. No other point, worth consideration, has been urged or pressed by the learned Counsel for the parties.

18. Accordingly, it is held that as no certificate was issued by the Project Implementing Authority approved by the Government of India in favour of the assessee, therefore, it (assessee) cannot claim exemption from duty on the basis

of certificate (Annexure A2) issued in favour of the supplier M/s Thermax Babcock & Wilcox Limited, Pune .

19. In the light of the aforesaid reasons, the present appeal is dismissed with no order as to costs.

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