

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA
EASTERN ZONAL BENCH: KOLKATA**

Excise Appeal No. 70953 of 2013

(Arising out of Order-in-Original No. 01/COMMR./CE/KOL-II/Adjn/2013-14 dated 23.04.2013 passed by Commissioner of Central Excise, Kolkata-II.)

Commissioner of Central Excise, Kolkata-II.

15/1, Strand Road, Kolkata-700001.

...Appellant (s)

VERSUS

M/s Vrinda Engineers Pvt. Ltd.,

144/145, J.N. Mukherjee Road, Ghusuri, Howrah-711207.

..Respondent(s)

APPEARANCE :

Shri S. S. Chattopadhyay, for the Appellant

Shri N. K. Chowdhury, Advocate for the Respondent

CORAM:

HON'BLE MR. R MURALIDHAR, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...77481/2023

DATE OF HEARING : 17.10.2023

DATE OF PRONOUNCEMENT: 08.11.2023

PER K. ANPAZHAKAN :

This is an appeal filed by the department against the impugned Order-in-Original dated 23.04.2013 passed by Commissioner of Central Excise, Kolkata II, wherein he has dropped the proceedings initiated in the Show Cause Notice dated 07.11.2012.

2. Briefly stated facts of the case are that the Respondent, as a sub-contractor availed the benefit of Notification 06/2006 dated 01.03.2006, supplied goods to M/s. Koderma Thermal Power Project Stage - I, for supply of technological structure of M/s DVC, a Govt. of India Enterprise for Barh Super Thermal Power Project, a mega power project, without payment of duty. As per Entry 91 read with condition no.19 of Notification 06/2006 -CE dated 01.03.2006 and Entry No. 400 read with condition no. 86 of Notification 21/2002-Cus

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dated 01.02.2002, all goods supplied against international competitive bidding falling under any Chapter of the First Schedule to Central Excise Tariff are rated 'Nil', subject to satisfaction of condition no.19, which states that the exemption would be available if the goods were exempted from duties of customs leviable, when imported into India. The Respondent vide their letter dated 27.11.2010 submitted a certificate issued by the Joint Secretary, Ministry of Power, to the effect that the project was a mega power project. The Project Authority Certificate dated 05.02.2007 categorically stated that supply of goods under the contract to be made to the power project in India were under the procedure of international competitive bidding. The name of the Respondent was included as sub-contractor in the contract document of M/s DVC, who were responsible for completion of the mega power project. The adjudicating authority satisfied with the documents submitted by the Respondent, allowed the exemption provided under Notification 06/2006 dated 01.03.2006 and dropped the proceedings. Aggrieved against the dropping of the proceedings, the department is in appeal.

3. In the grounds of appeal, the main contention of the Appellant is that the Respondent failed to produce any evidence to the effect that the goods were exempted from duties of Customs and Additional Duties of Customs, when imported into India. The Appellant contends that the Project Authority, M/s DVC failed to register its project in terms of para - 4 of the Project Import Regulations, 1986. Hence, the goods supplied by the respondent Viz. components/parts/accessories to coal handling plant for Barh Super Thermal Power Project, were not eligible to be classified under Ch Heading 98.01 of the Customs tariff which attracts 'Nil' rate of duty along with Additional Customs Duty. Accordingly, it was contended that the Respondent were not entitled to get the benefit of 'Nil' rate of duty in terms of Notification No. 6/2006 dated 01.03.2006, under Entry No. 91 read with condition no. 19.

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4. The Respondent submits that the project has been set up against tariff - based competitive bidding. Notification 6/2006 dated 01.03.2006 categorically exempts all goods supplied to mega power projects based on international competitive bidding. Exemption from customs duty would be available to such goods when imported into India. It is not necessary that the Respondent should also be registered under Project Import Regulations, 1986 to avail the exemption. Accordingly, they contended that they are eligible for the exemption provided under Notification 6/2006 dated 01.03.2006 and prayed for rejection of the appeal filed by the department.

5. Heard both sides and perused the appeal records.

6. We observe that the Respondent supplied components/parts/accessories to the Coal Handling plant for Barh Super Thermal Power Project. The Respondent vide their letter dated 27.11.2010 submitted a certificate issued by the Joint Secretary, Ministry of Power, to the effect that the project was a mega power project. The Project Authority Certificate dated 05.02.2007 categorically states that supply of goods under the contract to be made to the power project in India were under the procedure of international competitive bidding. The name of the Respondent was included as sub-contractor in the contract document of M/s DVC, who were responsible for completion of the mega power project. As per Entry 91 read with condition no.19 of Notification 06/2006 -CE dated 01.03.2006 and Entry No. 400 read with condition no. 86 of Notification 21/2002-Cus dated 01.02.2002, all goods supplied against international competitive bidding falling under any Chapter of the First Schedule to Central Excise Tariff are rated 'Nil', subject to satisfaction of condition no.19, which states that the exemption would be available if the goods were exempted from duties of customs leviable, when imported into India. In this case, the documents submitted by the Respondent clearly establish that the goods were supplied to a mega power project, set up under

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international competitive bidding. The Respondent's name has been incorporated as a sub contractor in the contract document of M/s DVC, who is responsible for execution of the project. Thus, we observe that the Respondent has satisfied all the conditions required to avail the exemption as provided under Notification 6/2006 dated 01.03.2006. We do not agree with the allegation of the department that the Respondent would be eligible for the exemption under Notification 6/2006 dated 01.03.2006, only if they are registered under Project Import Regulations 1986. Registration under Project Import is required only when they import the goods. In this case the Respondent has supplied goods manufactured by them domestically, for which exemption is specifically provided under notification 6/2006 dated 01.03.2006. Since, the Respondent has satisfied all the conditions required to avail the exemption under notification 6/2006 dated 01.03.2006, we find no infirmity in the order-in-original passed by the adjudicating authority, dropping the proceedings. Accordingly, we uphold the impugned order passed by the adjudication authority and reject the appeal filed by the department.

7. In view of the above discussion, we reject the appeal filed by the department.

(Pronounced in the open court on.....08.11.2023)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

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