**(2024) 03 CESTAT CK 0020**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Excise Appeal No. 10467, 10485 Of 2015

ACI Industrial Organic Pvt Ltd — APPELLANT

Vs

C.C.E. & S.T.-Vadodara-I — RESPONDENT

**Date of Decision :** 15-03-2024

**Acts Referred:**

**Citation :** (2024) 03 CESTAT CK 0020

**Hon'ble Judges :** Ramesh Nair, Member (J);C.L. Mahar, Member (T)

**Bench :** Division Bench

**Advocate :** A X S Jiwan, Ajay Kumar Samota

**Final Decision :** Allowed

## Judgement

Ramesh Nair, Member (J)

1. There are two Appeals filed by the Appellant M/s ACI Industrial Organic Pvt. Ltd on identical issues vide Appeal Nos. E/10467/2015 - DB and E/10485/2015 ? DB against Orders in Appeals Nos. VAD/EXCUS/ 001/AAP/626/2014?15 dated 07.01.2015 and VAD/EXCUS/001COM/029 ? 14 ? 15 dated 25.03.2015 respectively.

1. Brief facts of the case are that the Appellant M/s ACI Industries are engaged in the manufacture and clearance of excisable goods falling under Chapter 29 of the Central Excise Tariff Act, 1985. They were also availing Cenvat Credit under provisions of the CENVAT Credit Rules, 2004. The basic issue in both the appeals are that the Appellants had cleared field chemicals viz ?Di -ethylene Tri Amine Pentad Acetic Acid (DTPA) and Di ? Sodium (EDTA) to ONGC for their petroleum operations under International Competitive Bidding by availing exemption from payment of Central Excise duty in terms of Sr. No. 336 read with condition?41 of Notification No. 12/2012 ?CE dated 17.03.2012 that the Department alleged, that based on conditions required under Customs Notification No. 12/2012? Customs dated 17.03.2012, the Appellant have wrongfully availed benefits under the Central Excise Notification. Hence, the present appeals.

2. Shri A X S Jiwan, Learned Consultant for the appellant requested vide letter dated 01.03.2024 submitted on 12.03.2024 that appeals be decided on merit as well as submission made on 24.08.2023.

2.1 The submission of the Appellant is that the relevant Customs Notification No. 12/2012 ? Customs dated 17.03.2012 vide entry No. 356 and condition ? 41 read with List?13 allows exemption to all goods of any chapter supplied against ? International Competitive Bidding? and that such goods cleared under International Competitive Bidding should be exempted from Customs duties when imported to India. It is also submitted that the Department has not raised any objections in so far as the supplies of goods to ONGC under international competitive biddings is concerned however the Department has raised objections with regards to the Appellant being a sub ? contractor of ONGC and thus alleged that the Appellant has wrongly availed exemption by not fulfilling the conditions prescribed under Customs Notifications for the importers. It is submitted that the Appellant being domestic suppliers are not obligated to fulfill conditions specific for importers. The appellant submit that the Adjudicating Authority has travelled beyond the Show Cause Notice while re?adjudicating the case. They relied on the judgment of Kent Introl Pvt Ltd v Commissioner of Central Excise, Nashik 2014 TIOL 211 CESTAT?Mum.

3. Shri Ajay. K. Samota, learned Superintendent (AR) appearing on behalf of the Department reiterates findings of the impugned order.

4. We have carefully considered the submissions made by both the sides and pursued the records. We find that in the present case the Appellants have made the supply of the goods to ONGC under International Competitive Bidding and availed exemption under Central Excise Notification No. 12/2012 ? CE dated 17.03.2012 which has not been disputed by the Department. The dispute in the present case is with respect to invoking condition no. 41 c (iv) of the Customs Notification No. 12/2012 ? Customs dated 17.03.2012. to deny the Appellant exemption availed under Central Excise Notification. The demand has been raised by the Department asserting that the Appellant has not furnished an affidavit to the effect that they are the bonafide sub ? contractors of ONGC. It is pertinent to note here that the condition for claiming exemption under the said notification corresponds to the requirement of the goods being eligible for exemption and the furnishing of such documents in support of the claims by the importers whereas in the present case the Appellants are domestic suppliers and as regards the goods being eligible for exemption there exists no dispute to the fact by the Department. We observe that the said issue under similar circumstances has been settled by the Hon?ble Tribunal, Mumbai in the case of Kent Introl Pvt. Ltd v Commissioner of Central Excise, Nashik 2014 TIOL 211 CESTAT ? Mum. The relevant paragraph is reproduced below:-

?5.2 The Customs Notification stipulates that goods specified in List 12 should be supplied to petroleum operations undertaken by ONGC or Oil India Ltd. and Item 15 of List 12 covers all types of valves and all such valves are eligible for

 

Customs duty exemption both from Basic Customs duty as well as CVD. Therefore, the appellant has satisfied condition No.19 of the Excise Notification which stipulates that the goods are exempt from duties of customs leviable under the First Schedule to the Customs Tariff and the Additional Duty leviable under Section 3 of the Customs Tariff Act when imported into India. As regards the condition No.29 referred to in Notification No.21/2002, those conditions have been stipulated to be complied by the importers of goods and do not apply to domestic manufacturers. So long as the goods are exempt, the condition to be satisfied by the domestic suppliers is that they should be supplied under International Competitive Bidding which the appellant has fulfilled in these appeals. (Emphasis applied). Therefore, we have to uphold the contention of the appellant and reject the contention of the Revenue. This Tribunal's decision in the case of CST (cited supra) also confirms this view.

6. In view of the above, we set aside the impugned orders and allow the appeals with consequential relief if any, in accordance with law.?

In view of the above judgment, in the present case being similar issue and facts involved that of above judgment, the Appellant are eligible for exemption under Central Excise Notification under Notification No. 12/2012 ?CE upon fulfilling all conditions stipulated therein, thus sufficiently establishing that the goods dealt with by the Appellants qualify for exemption. We find that the department?s allegation that the Appellant has wrongfully availed exemption has no basis as demand has been confirmed demand on an insignificant issue as domestic manufacturers cannot be expected to comply with such conditions that are required to be imposed on importers. Therefore, the appeal succeeds on merits.

5. In view of the aforesaid findings and discussion, the impugned orders are set aside and appeals are allowed with consequential relief if any, in accordance with law. MA is also disposed of.

 