(2018) 03 RAJ CK 0105

In the Rajasthan High Court

Case No : Central, Excise Appeal No. 22 of 2018

Commissioner Of Central Goods And Service Tax Central Excise @APPELLANT@Hash Bhoorathanam Construction Co. (P) Ltd.

Date of Decision : 13-03-2018

Acts Referred:

Central Excise Act, 1944 — Section 35G(3)(5)

Citation : (2018) 03 RAJ CK 0105

Hon'ble Judges : K.S.JHAVERI , J;VIJAY KUMAR VYAS, J

Bench : Division Bench

Advocate : Siddharth Ranka, Saurabh??Harsh

Final Decision : Dismissed

Judgement

Tariff Item,"Description of

goods",Unit,Rate of duty

1,2,3,4

Tariff Item,"Description of

goods",Unit,Rate of duty

1,2,3,4

7307,"Tube or Pipe

Fitting (For

Example,

Couplings, Elbows,

Sleeves),Â Of Iron

or Steel

--Cast Fittings:",,

7307 11,"Of non-malleable

cast iron:",,

307 11 10,"SpongeÂ iron cast

fittings",Kg.,12.5%

7307 11 20,"SG iron cast

fittings",Kg.,12.5%

7307 11 90,Other,Kg.,12.5%

7307 19 00,Other,Kg.,12.5%

required to make a declaration and give an undertaking, as specified in the Form annexed while claiming exemption for the first time under this",,,

Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the",,,

declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under,,,

the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences",,,

are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly complied with.",,,

Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the",,,

view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed.",,,

7. He has also taken us through the observations made by the CIT (A) which reads as under:,,,

4. During the course of personal dearing, Shri Arvind Sharma, Advocate appeared and reiterated the submission made in the appeal documents. He",,,

asked for one month time to get the necessary certificates from the State Government, PHED Department regarding MS Specials and weight vis.",,,

Length.,,,

6. In this case there is no dispute about the fact that the appellants have cleared PSCC Pipes, MS Pipes and MS Specials without payment of duty to",,,

PHED after availing the benefit of Notification No. 47/2002-CE dated 06.09.2002 and 06/2006-CE dated 01.03.2006. It is also undisputed that the,,,

certificate issued by the respective authority do not have the name of product I.e

MS Specials. On going through the said notification, it is observed",,,

that the said notification provides full exemption to the Pipes covered in any of the chapter needed for delivery of water from its source to the plant,,,

and from there to the storage facility subject to the condition No.4 that a certificate issued by the Collector/District Magistrate/Deputy Commissioner,,,

of the District in which the plant is located is produced to the Dy./Assistant Commissioner of Central Excise, having jurisdiction over the factory of the",,,

effect atha such goods are cleared for the intended use as specified in the Notification. In this case the adjudicating authority has observed that the,,,

appellants have cleared MS Specials without payment of duty and no certificate to the effect that such goods were cleared for the intended use as,,,

specified in the Notification have been submitted. Under the impugned order the adjudicating authority has observed as under:,,,

â??I, on perusal of the certificates submitted by the assessee find that the MS Specials cleared by the assessee alongwith other pipes viz. PSCC",,,

Pipes, MS Pipes & BWSC Pipes in the guise of exemption Notification No. 06/2006-CE dated 01.03.2006 and Notification No.47/2002-CE dated",,,

06.09.2002 to PHED, Govt. of Rajasthan did not find mention of supplies of MS Specials in relevant certificates whereas the other Pipes have their",,,

clear mention in the certificates. However, I observe from the facts of the case that the assessee had cleared MS Specials to PHED, Govt. of",,,

Rajasthan on the basis of the certificates in the name and style of other pipes and thereby availed the exemption of Central Excise duty wrongly by,,,

willful mis-statement of the facts with an intention to evade the payment of Central Excise duty in the guise of exemption Notification in respect of the,,,

supplies of MS Specials made to the PHED, Govt. of Rajasthan. I also find from the statement of Shri Ramesh Chandra Sahu, Authorized Signatory",,,

of the assessee which were recorded on the spot wherein he had interalia stated that PSCC Pipes and MS Pipe are for different use and used in,,,

different zones of pressure and site condition and MS Specials are used for changing the alignment using for Tee, Bends and are short in length used",,,

for ling and jointing of Pipes in required alignment. However, he submitted the details of clearance of MS Specials during April 2006 to March 2008 ut",,,

could not give a proper reply for the said clearances of MS Specials without payment of duty and without having proper exemption certificate in this,,, respect. I also find that the statement of Shri Anil Kedia, Accounts Officer, authorized by the director of the company is also co-related in this respect",,,

who tendered the statement that they were simultaneously clearing PSCC Pipes, BWSC Pipes, MS Pipes and MS Specials under various certificates",,,

issued by the Collector under exemption Notification No.47/2002-CE dated 06.09.2002 and 06/2006-CE dated 01.03.2006 substantiating the allegation,,,

of willful mis-statement of the facts as raised by the impugned show cause notice. I also further observe that unit of quantity of clearance of various,,,

pipes are mentioned in running meters/kms. In the certificates whereas the assessee had shown the clearance of MS Specials in numbers/kgs in the,,,

ER-1 returns submitted to the department but however no information has been specified regarding Collectorâ??s Certificate. I, therefore conclude",,,

that the assessee have wrongly availed the exemption under Notification No.47/2002-CE dated 06.09.2002 and 06/2002-CE dated 01.03.2006 for the,,,

clearance of MS Specials which were not specified under the certificates issued by the District Collectors and had thus cleared the same without,,,

payment of Central Excise duty by willfully mis-stating the facts in the invoices issued by them mentioning the clearances as exempted clearances,,,

under the aforesaid notifications.,,,

7. I find that the appellants have not produced any evidences contrary to the facts mentioned in the impugned order except that MS Pipes and MS,,,

Specials are one and same things. Therefore, there is no point to interfere in the impugned order. Moreover, the appellants during the course of",,,

personal hearing stated that the certificates in respect of clearances of MS Specials shall be provided within one month but after expiry of more than 3,,,

month, the same has not been submitted. Further, it is observed from the statement of Shri Ramesh Chandra Sahu, Authorized Signatory of the",,,

assessee wherein he stated that PSCC Pipes and MS Pipe are for different use and used in different zones of pressure and site condition and MS,,,

Specials are used for changing the alignment using for Tee, Bends and are short in length used for lying and jointing of Pipes in required alignment.",,,

Further, the Pipes are cleared in running length whereas the MS Specials were cleared in Nos. and Kgs which clearly indicated that both the products",,,

are different and their uses are also different and known in the market with different names and characteristics. In the obsence of any certificate,,, issued by the relevant authority regarding use of particular product for intended purpose the benefit of said conditional exemption has rightly been,,,

denied by the adjudicating authority. Moreover, the appellant during the course of personal hearing stated that the necessary certificate shall be",,,

produced within one month time but they could not produce the same even after more than four months. In the above circumstances I am unable to,,,

accept the contention of the appellants.,,,

8. We have heard the counsel for the appellant.,,,

9. In our considered opinion, while considering the matter, the Tribunal has rightly observed as under:",,,

4. After hearing both the sides and on going through the material available on record, it appears that the main argument of the appellant that MS",,,

Special are also a sort of pipe, though of smaller length and, therefore, the reference to the MS pipes in the District Collectorâ??s Certificate would",,,

also cover MS Special. On going through the record, we find that out of the 8 certificates in 4 certificates MS Special has been mentioned. The",,,

Department has already granted exemption. When the exemption has been granted in 4 certificates it can be granted in the remaining 4 certificates,,,

also. It is not the case of the Department that MS Special were supplied somewhere other than projects in hand. The MS Special are connected with,,,

the water pipes before they are used, sometimes as a bend to divert the flow. When the MS Specials were used in the project pertaining to the water",,,

supply then the same is allowable as Department has already allowed in 4 certificates. Hence, for technical mistake on the part of the appellant, we",,,

cannot deny the substantial justice.,,,

10. In our considered opinion, the production is the same, manufacturing and the process is the same and excise duty is liable on the manufacturing,",,,

merely because in the certificate there is no mention of MS Special, the taxing statute will not be different. In view thereof, the view taken by the",,,

Tribunal is just and proper and no interference is required.,,,

11. No substantial question of law arises in the appeal.,,,

The appeal stands dismissed.,,,