(2021) 06 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 499 Of 2012

Kirloskar Brothers Ltd APPELLANT

Vs

Commissioner Of Central Excise RESPONDENT

Date of Decision : 18-06-2021

Acts Referred:

Central Excise Act, 1944 — Section 11A, 11AB, 11AC
Customs Tariff Act, 1975 — Section 3

Citation : (2021) 06 CESTAT CK 0032

Hon'ble Judges : Ajay Sharma, J;C.J. Mathew, Technical Member

Bench : Division Bench

Advocate : Chandani Tanna, K N Ahirwar

Final Decision : Allowed

Judgement

1. A few preliminaries at the outset may do no harm; on the contrary, these may serve to provide a perspective for the resolution of the dispute in this

appeal of M/s Kirloskar Brothers Ltd, manufacturers of â??power driven pumpsâ?? and â??parts of pumpsâ??, against the saddling of duty liability,

amounting to Rs. 3,12,861, under section 11A of Central Excise Act, 1944, along with interest thereon under section 11AB of Central Excise Act,

1944, and imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 by the original authority that was upheld in impugned

order-in-appeal no. PII/RKS/5/2012 dated 2nd January 2012 of Commissioner of Central Excise (Appeals), Puneâ?"II.

2. The monetary stake in the outcome of this dispute notwithstanding, the gravitas of the proposition espoused in the orders of the lower authorities

compels an elaborate evaluation on our part. More so, as the disposition of the impugned goods has not been considered relevant in the proceedings which have been limited to non-compliance with threshold conditions entitling availment of exemption from duties of central excise. The issue for

resolution is the empowerment to deny availment of exemption extended to indigenously manufactured goods by notification issued under Central

Excise Act, 1944 for not being in compliance with conditions prescribed in parallel notification issued under Customs Act, 1962 for procurement from

abroad. Specifically, the exemption to impugned goods was available if intended for use in petroleum exploration or in mining leases granted to

designated entities and were procured through â??international competitive biddingâ?? process.

3. Scripting of privileges, in public interest, for equipment deployed in accessing natural resources is no stranger to pubic fiscal policy. Such exemptions

from duties of customs are, along with insistence on â??international competitive biddingâ??, intended to enable designated agencies attain optimality

â?" balancing quality and price â?" in procurement from the global market. These circumstances, and conditions, necessitate parallel exemptions from

duties of central excise with identical qualifying eligibility. The present controversy requires us to determine if, traversing beyond circumstances that

qualify goods for exemption, the procedures peculiar to clearance of imported goods must also be complied with by domestic suppliers.

4. The appellant cleared â??power driven pumps and partsâ?? under invoice no. 5500500641 dated 19th January 2006 and no. 5500005804 dated

30th December 2009 in fulfillment of orders from M/s Clough Engineering Ltd and M/s Paramount Ltd awarded by â??international competitive

biddingâ?? for deployment in petroleum exploration project. The benefit of notification no. 6/2002-CE (at serial no. 301) dated 1st March 2002 and

no. 6/2006-CE (at serial no. 91) dated 1st March 2006, availed for exemption of Rs. 3,02,977 and Rs. 9884 respectively, was sought to be denied in

proceedings initiated by the original authority for not having furnished documentation evidencing eligibility for such exemption which culminated in

confirmation of demand and imposition of penalty that was upheld by the first appellate authority leading to the present appeal.

5. According to Learned Counsel for the appellant, their consistent submission, through the several stages of proceedings, had been that the impugned

goods were eligible for exemption under the notification, prevailing at the relevant times, arising from eligibility for exemption in the corresponding notification issued under Customs Act, 1962 and of, thus, being compliant with the conditions in the notifications issued under Central Excise Act,

1944. She further submits that their plea in those proceedings of not being required to comply with the procedures prescribed for availing exemption on

goods imported into India went unheeded. According to her, those submissions continue to be the thrust of the pleading before us for setting aside the

impugned order. The observation of the Honâ??ble High Court of Bombay in Commissioner of Central Excise, Nashik v. Kent Introl Pvt Ltd [2016

(331) ELT 77 (Bom)] that

â??5.2 The Custom 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 of 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 refer 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. Therefore, we have to uphold the contention of the appellant and reject the contention of

the Revenue.â?¦ â??

in affirming the decision of the Tribunal in Kent Introl Pvt Ltd v. Commissioner of Central Excise, Nashik [2014 (301) ELT 84 (TriMumbai)] is cited

by her as ending the controversy once and for all.

6. Learned Authorized Representative prefaced his arguments by drawing our attention to the applicability of the judgement of the Honâ??ble

Supreme Court in Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company [2018 (361) ELT 577 (SC)], enjoining claimants to

establish eligibility for exemption and exclusion of assessee from any benefit arising from any ambiguity in the notification, to this dispute involving conditional exemption. He submitted that the decision in re Kent Introl Pvt Ltd had been rendered without the benefit of the observations of the

Tribunal in Hindustan Petroleum Corporation Ltd v. Commissioner of Central Excise, Mumbai-II [2013 (298) ELT 294 (Tri-Mumbai)] and, therefore,

is no guide in resolving the controversy. It was argued that the exemption from excise duties flow from the pre-requisite of like goods enjoying

exemption from duties of customs which, being conditional upon compliance with prescribed documentation, requires such documents to be furnished

at the time of availment of exemption with failure thereof leading to recovery of duties with attendant penalties.

7. The decision of the Honâ??ble High Court of Bombay, in re Kent Introl Pvt Ltd, has, in no uncertain terms, established the extent of compliance

for eligibility to be exempted from duties of central excise. The decision of the Tribunal in re Hindustan Petroleum Corporation Ltd, and

notwithstanding the portion extracted by Learned Authorized Representative, is much on similar lines though the facts differed to the extent that some

of the goods cleared without payment of duty had, admittedly, been mis-utilised and the Tribunal, based on those observations, immunized the supplier

from being subjected to recovery proceedings. We, therefore, need not labour over the primacy of the decision relied upon by Learned Authorized

Representative.

8. The scheme of exemption, intended to serve public interest by securing optimal deployment of goods and services for recovery of natural resources,

enables exclusion of duties on compliance with prescribed conditions and procedures that are designed for ensuring the objective. The intent of

enabling level playing field for domestic and international procurement is reflected in the separate notifications issued under Customs Act, 1962 and

Central Excise Act, 1944; while eligibility stems from sourcing out of the common global pool of enumerated goods, the procedures are bound to be

dissimilar owing to the divergence of taxable event under the two statutes. Hence the eligibility, common to the two notifications, at the threshold is

procurement through â??international competitive biddingâ?? of the specified goods intended for use as stipulated. The denial of benefit to the

appellant is not predicated on this threshold eligibility but on the procedural pre-requisites that are additionally prescribed in the customs notification.

9. Tax liability under Customs Act, 1962 arises upon import of goods with the importer responsible for compliance with all requirements for clearance;

the liability under Central Excise Act, 1944 is, though collected on clearance, a levy on manufacture that the manufacturer assumes responsibility for.

With registered status under the statute, a manufacturer, supplying goods against an exemption notification, poses lesser risk than an importer in

recovery of duty foregone in the event of misuse. The procedural prescriptions stipulated for exemption from duties of customs are intended to

neutralize that additional risk without causing undue inconvenience to the transaction.

10. Imports are effected by the designated agency or their subcontractors for implementation of the project and, to them, prescribed certification is of

easy access; the role of a manufacturer is limited to supply which precludes direct access to such certification. While the intended deployment and

procurement through â??international competitive biddingâ?? is, doubtlessly, ascertainable at the premises of the importer, the prescribing of

certificate to be furnished eliminates such repeated verification of the threshold eligibility for each clearance of imports. Likewise, the devolution of

liability on the designated agency in the event of mis-utilization is to cover the contingency that sub-contractors, liable as importer, may not be easily

traceable subsequently. These procedural stipulations are facilitative measures that substitute for more burdensome verifications of threshold eligibility

on each occasion of import. Further, contrary to the argument of Learned Authorized Representative that exemption under notification no. 21/2002-

Cus dated 1st March 2002 is subject to â??end use certificationâ??, we observe that, in addition to the threshold eligibility, the procedural

prescriptions are also to be complied with entirely at the threshold.

11. The essence of optimal sourcing being the disregarding of customs frontiers, the enumeration of goods entitled to exemption from duties of

customs does not bear replication in the exemption notification under Central Excise Act, 1944 and the condition prescribed therein should not have to

be expanded beyond that limited purpose. It would be stating the obvious to point out that domestic procurement is not subject to the same risks or the

verification of eligibility so burdensome as to warrant that the facilitative procedures of the notification issued under Customs Act, 1962 be replicated in the notification issued under Central Excise Act, 1944. To insist on compliance by a domestic manufacturer with impossible, and uncontemplated,

prescriptions is to insinuate barriers to eligibility beyond that envisaged by the authority empowered to do so. More so, in the lack of any allegation that

the impugned goods were not procured through â??international competitive biddingâ??, are not enumerated in the attendant list or have been used

for purposes other than petroleum exploration.

12. Therefore, in accord with the judgement of the Honâ??ble High Court of Bombay in re Kent Introl Pvt Ltd, we hold that the impugned order

lacks legality for having ordered recovery of duty and imposed penalties despite the appellant having complied with conditions for availment of

exemption. Appeal is allowed with consequential relief.

(Pronounced in Open Court on 18/06/2021)

