
(2023) 06 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.42568 Of 2013

M/S. IGP Engineers Pvt. Ltd

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 26-06-2023

Acts Referred:

Central Excise Rules, 2002 — Rule 25

Citation : (2023) 06 CESTAT CK 0032

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : M. Karthikeyan, N. Sathyanarayanan

Final Decision : Allowed

Judgement

M. Ajit Kumar, Member (T)

1. This appeal is filed by M/s. IGP Engineers Pvt. Ltd. (Unit – II) (herein after also referred to as IGP), Sembakkam, Kancheepuram against Order in Appeal No. 119/2013 (M-III) dated 27.9.2013.

2. Brief facts are that the appellants are manufacturers of rings and ring joint gaskets. They are a sub-contractor of the main contractor ie M/s.Larsen & Toubro Ltd (L&T) for a power project awarded by M/s. Cairn Energy India Pty. Ltd. under International Competitive Bidding. The appellant has cleared 8525 numbers of gaskets valued at Rs.15,92,077/- claiming exemption from duty under Notification No. 6/2006 CE dated 1.3.2006. Revenue sought to deny the claim of exemption from duties under the said notification, since the Project Authority Certificate (PAC) was issued by M/s. Cairn Energy India Pvt. Ltd. to the IGP unit situated at Kottivakkam and not to the appellant unit, which is situated at Sembakkam. After due process of law, the adjudicating authority vide Order in Original held that claim of exemption was erroneous and demanded Rs.1,37,187/- as central excise duties on clearances made during April 2009, along with interest and imposed a penalty equal to duty under Rule 25 of the

Central Excise Rules, 2002. Aggrieved by the order, the appellant preferred an appeal before Commissioner (Appeals), who vide the impugned order held that in the absence of PAC prior to the date of clearance and in the absence of any reference in the invoice of the appellant to contract dated 12.3.2008 awarded under ICB to L&T, the impugned goods were not eligible for exemption under the Notification and dismissed the appeal. The appellants have assailed the impugned order in appeal before us.

2.1 No cross-objection has been filed by the respondent-department.

3. We have heard Shri M. Karthikeyan, learned counsel for the appellant and Shri N. Sathyanarayanan, learned AR for Revenue.

3.1 The learned counsel appearing on behalf of the appellant submitted that the fact of 8525 numbers of gaskets having been supplied for the petroleum operations project in RJ-ON-90/1 Onshore Block at Rajasthan is not disputed. The only dispute is that the Project Authority Certificate (PAC) was issued by M/s. Cairn Energy India Pvt. Ltd. to the unit situated at Kottivakkam, while a part of the supply was made by the appellant's unit, which is situated at Kizhur, Sembakkam. The learned counsel stated that M/s.L&T had issued a Letter of Intent (LOI) bearing the LOI NO. CHEM US/45000-57146/KPS dated 25.2.2009 to IGP Engineers for the supply of 36544 numbers of gaskets with a total value of Rs.48,75,765/-. Subsequently, L&T has issued a purchase order (PO) bearing PO NO. HEM US/45000-57146/KPS dated 25.3.2009 to IGP Engineers for supply of the said goods. Both the LOI and PO were addressed to IGP Engineers office at Valmiki Street. Against the above order, the appellant was required to supply the goods from their Kottivakkam unit. However, due to certain operational convenience Kottivakkam unit cleared 8525 numbers of semi-finished gaskets to the appellant unit at Sembakkam on payment of duty for further operations. The Sembakkam unit processed the said gaskets and cleared the same to M/s. L&T by availing the benefit of exemption under Notification 6/2006-CE dated 1.3.2006 against the above said PAC. He has submitted a chart showing the dates and events, which are reproduced below.

Sl.No

Date

Documents

Document Reference Number

1

25.02.2009

Letter of Intent issued from L&T to IGP's head office for 36,554 Nos. of gaskets.

LIO No. CHEM US/45000- 57146/KPS

2

25.03.2009

Purchase Order from L&T issued

from L&T to IGP's head office.

PO No. CHEM US/45000- 57146/KPS

3

01.04.2009

Project Authority Certificate issued to IGP's Kottivakkam Unit for 36,554 Nos. of gaskets.

CEIL/L&T/PAC/120

4

01.04.2009

Invoice raised from IGP's Kottivakkam Unit to Sembakkam Unit for stock transfer.

A 0037/09-10

5

15.04.2009

Invoice raised from IGP's Sembakkam Unit to M/s Calrn Enenry India Pty Ltd.

B 0031/09-10

He admitted that while there was a change in the address mentioned in the invoice, the supplies were executed by them and that the letter of intent and purchase orders were for the same supplies and were not for different projects. As such, it cannot be construed that these supplies were made against different contracts. This being the case, the exemption availed by the appellant cannot be questioned or denied for the mere reason that the PAC was in the name of Kottivakkam unit and not in the name of Sembakkam unit on the date of clearance of the impugned goods from Sembakkam unit. He hence prayed that the impugned order may be set aside and the appeal be allowed.

3.2 We have Shri N. Sathyanarayanan learned AR on behalf of Revenue. He stated that the system of allowing exemption based on PAC issued by the Project Authority is to ensure that the exemption is not misused by unscrupulous elements and since the payment of duty has to be on the date of clearance of goods, the PAC issued should predate the clearance. Further although the appellant has alluded to a fresh PAC being issued in the name of the Sembakkam unit it was found that there were discrepancies in the dates of contract and PO issued by L&T. He has further reiterated the points given in the Order in Appeal and prayed that the appeal may be upheld.

4. We have heard the parties to the dispute. We find that L&T had placed a letter of intent dated 25.2.2009 which was followed by a purchase order for the same goods dated 25.3.2009 addressed to IGP's head office (HO)/ registered office. Although the LOI and PO were addressed to IGP's HO the PAC issued by M/s. Cairn Energy India Pvt. Ltd. was to the unit situated at Kottivakkam. The appellant admits that for operational conveniences the Sembakkam unit processed and cleared 8525 gaskets to M/s. L&T by availing the benefit of exemption under Notification 6/2006-CE dated 1.3.2006 against the above said PAC. The appellant then got the PAC amended on 25/06/2009 by splitting the supplies between the Sembakkam and Kottivakkam units as per the supplies made. We find that invoice bearing No. B0031/09-10 dated 15.4.2009 issued by the appellant's Sembakkam unit for 8525 gaskets, carries the LOI reference number and date. The gaskets under the above invoice have been cleared to M/s. Cairn Energy India Pty. Ltd. A/c L&T Ltd, Northern Area Development Project, Rajasthan as mentioned in purchase order dated 25.3.2009 issued by L&T. We also find that the LOI and PO were addressed to IGP's HO, it was only the PAC which mentioned the unit situated at Kottivakkam. The said PAC has subsequently been amended to rectify and to reflect the actual clearances made to the same project. Annexure I to the split PAC's Nos. 188 & 189 certified by the main contractor also mentions the LOI/PO number and date. Revenue was of the view that the system of allowing exemption based on PAC issued by the project authority is to ensure that the exemption has not been mis-used by unscrupulous elements and as the payment of duty has to be as on the date of clearance of goods, the PAC issued should predate the clearance. While this is correct, the appellant has mentioned the split in supply of gaskets to be caused by operational conveniences, which is not unusual in business dealings. They have further got a split PAC issued which is for the quantities cleared by both the units towards the same LOI/PO for the power project in RJ-ON-90/1 Onshore Block at Rajasthan. We are hence of the opinion that when the goods have been found to have been cleared towards the power project under 'International Competitive Bidding' which was eligible for duty exemption, the LOI and PO for the supply were addressed to IGP's HO and there is no allegation of clandestine clearance etc, duty exemption benefit cannot be denied merely because the initial PAC was in the name of Kottivakkam unit and not in the name of Sembakkam unit on the date of clearance when the PAC was also rectified later.

5. Based on the discussions above, we find that the appellant is eligible for availing exemption from duty under Notification No. 6/2006 CE dated 1.3.2006 for the impugned goods. This being so demand for interest and penalty do not survive. In the circumstance we set aside the impugned order and allow the appeal, with consequential relief if any as per law.