
(2015) 07 SC CK 0053

In the Supreme Court Of India

Case No : Civil Appeal No. 5274 of 2005

Venkatarama Power Ltd.

APPELLANT

Vs

Commissioner of Customs, Mumbai

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Citation : (2015) 322 ELT 416

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Liz Mathew, Malavika Prasad and Vikas Mehta, for the Appellant; K. Radhakrishna, Sr. Adv., Nisha Bagchi, Aruna Gupta, Ritesh Kumar, B.K. Prasad and Sujeeta Srivastava, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. The Appellant herein had filed an application for registration of "Contract Registration" under Heading 98.01 of the Customs Tariff Act, 1975 (hereinafter referred to as "the Act") in respect of one number of "Waukeshah Enginotor, Model VHP 5904 GSI, Gas Enginotor Generating System with accessories and spares for initial setting up of a 1MW Power Generation Plant using natural gas. The adjudicating authority denied the request for registration of the contract.

2. Against that order, the Appellant preferred an appeal before the Commissioner (Appeals) who also held that the Appellant is not entitled for the project import benefit. Further appeal to the CEGAT preferred by the Appellant also failed.

3. The Appellant is trying to get the benefit of exemption Notification 21/2002 Cus dated 1.3.2002 and the endeavour is to cover the aforesaid import under serial No. 399 Sub-clause (iv). Relevant portion of Sl. No. 399 is as under:

399.98.01:

(i) Fertiliser projects; 5% 16%

(ii) Coal mining projects; 5% 16%

- (iii) captive power plants of 5MW or more 25% 16%
- (iv) power generation projects including 5% 16% gas turbine power projects (excluding captive power plants set up by projects engaged in activities other than in power generation)
- (v) barge mounted power plants 5% Nil
- (vi) power transmission projects of 66KV and above 25% 16%
- (vii) other industrial plants or projects 25% 16%

4. It is the admitted position that the capacity of power plant of the Appellant is only 1MW. Further the power generated plant is exclusively use for the sister concern of the Appellant and is not for consumption of the general public. In view thereof, we are of the opinion that the Tribunal has rightly held that 1MW plant of the Appellant cannot be treated as power generation project. For this purpose, the Tribunal has relied upon the decision of Union of India and Others Vs. Indian Charge Chrome and Another, AIR 1999 SC 3504 : (1999) 66 ECC 24 : (1999) 84 ECR 273 : (1999) 112 ELT 753 : (1999) 6 JT 306 : (1999) 5 SCALE 226 : (1999) 7 SCC 314 : (1999) AIRSCW 3498 : (1999) 7 Supreme 533 wherein the definition between a power project and power plant is drawn in the following manner:

The industrial resolution made a clear distinction between "power project" which is set up for generation and distribution of electricity and a "power plant" which is set up to generate power for their own requirement or captive consumption of the industrial unit. The captive "power plant" cannot be considered as "power project" and the two cannot be equated with each other. A power project is set up by the Government to cater to the needs of the public by generating and distributing the electricity generally while a captive power plant is set up by an industrial unit to feed power to its own plant or unit for manufacturing of goods other than power. Though it is true that an industrial unit installing a power plant to the extent of the electricity generated by it shares the burden of the government power projects generating electricity for distribution and to that extent their purpose may be alike, the fact remains that a power-generating unit in the public sector has its own limitations and shortcomings as well. An industrial unit depending on public power generation source shall have to bear with power cuts, failures and other Regulations and restrictions imposed in the public interest. By installing its own power plant, the industrial unit is free to generate and avail uninterrupted power supply or the quantum and flow of electricity suited to its own requirements and thereby it can maximise its production and consequently its profits. It is therefore clear that power plant projects engaged in generation and distribution of power as its end product-the sense in which the expression has been used in the industrial policy resolution constitute a class by themselves distinct from the power plants established by industrial units generating electricity for captive consumption and not for distribution. The two classes are well defined.

5. We thus do not find any fault with the order of the Tribunal. This appeal is accordingly dismissed.