IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.202 OF 2014

Commissioner of Central Excise, Nashik ... Appellant
versus
M/s.Kent Introl Private Limited ... Respondent

Mr.A.S.Rao with Mr.Neelesh V. Kalantri for Appellant.
Mr.Vivek V. Khemka for Respondent.

CORAM : S.C.DHARMADHIKARI AND
B.P.COLABAWALLA, JJ.

DATE : 16 November 2015

PC :

1. This appeal by the Revenue challenges the order of Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (`Tribunal') dated 8 November 2013.

2. The Assessee-Applicant before the Tribunal challenged two orders of Commissioner of Central Excise and Customs (Appeals), Nashik dated 29 July 2011 and 22 November 2012. The argument of the assessee-applicant before the Tribunal was that it supplied Globe Control Valves to M/s.Essar Offshore Subsea Limited and M/s.Swiber Offshore Construction Pte.Ltd. Singapore and claimed benefit of serial number 91 of table annexed to Notification No.6/2006 dated 1

March 2006. The said Notification granted exemption to goods supplied against international competitive bidding, subject to condition no.19. Condition no.19 of that Notification states that goods are exempted from customs duty leviable under the First Schedule to the Customs Tarrif Act, 1975 and the additional duty leviable under Section 3 of the Customs Tariff Act when imported into India. Customs Notification No.21/2002 dated 1 March 2002 vide serial no.214 granted exemption to the goods specified in List-12 required in relation to petroleum operations undertaken under petroleum exploration licenses or mining leases granted by the Government of India or any State Government to Oil and Natural Gas Corporation Limited (`ONGC') on nomination basis and the exemption was subject to condition no.29. List-12 of the said Notification covers all types of valves including high pressure valves. Condition no.29 of the Customs Notification referred above stipulated that the importer shall produce an essentiality certificate from the Directorate of Hydro Carbons (`DGHC'). In one of the appeals, the claim for benefit of exemption under the Notification No.6/2006 was rejected on the ground that the supply is not against international competitive bidding. In another appeal, the learned Appellate Authority has denied the benefit on the ground that the assessee-applicant did not produce the essentiality certificate from DGHC. That is how the duty demands have been confirmed along with interest and penalties.

3. The Applicant before the Tribunal pointed out that there is a project certificate issued by ONGC in favour of M/s.Essar Offshore Subsea Limited. In that certificate, the Applicant's name figures as a sub-contractor. The supply of goods was required in relation to petroleum operations undertaken under petroleum explorations license or mining lease under international competitive bidding and it also satisfies the import policy. The assessee-applicant argued that supplies have been made in respect of the contract awarded by international competitive bidding procedure. The Applicant's name also figures as a sub-contractor and the product supplied by the Applicant namely Globe Control Valves also figures therein. Hence, in respect of both contracts, the goods supplied against international competitive bidding condition is satisfied.

4. As far as other condition that the goods should also be exempted from basic customs duty and additional customs duty (Condition no.19) is also satisfied because the valves supplied were exempted.

5. As far as Condition no.29 is concerned, the argument of the assessee-applicant was that this applies to importer and has to be satisfied by importers. This condition has no applicability to domestic manufacturers. It is this argument of the assessee-applicant which has been upheld by the Tribunal in the impugned order and that is why Revenue is before us.

6. Our attention is invited by Mr.Rao to the question of law which he terms as substantial question of law. He would also invite our attention to the orders of lower appellate authority which have been reversed by the Tribunal. Mr.Rao would urge that there is no compliance with the conditions of the exemption notification and particularly Condition No.29.

7. Mr.Khemka submits that the assessee-respondent herein being a domestic manufacturer and the goods are indigenous, the conditions to be satisfied by the importers were, therefore, inapplicable. The conditions other than condition no.29 have been held to be satisfied and that is a factual finding. Therefore, the appeal raises no substantial question of law and should be dismissed.

8. With the assistance of learned counsel, we have perused the memo of appeal and all annexures thereto including the relevant notification which has been reproduced at page 11 of the paper book. Condition no.29 is only relied upon but a bare perusal thereof would indicate that the Tribunal has held that Condition no.29(c)(iv) is inapplicable to the assessee before it. As far as Condition nos.29(c)(i) to (iii) are concerned, the Tribunal found that all such stipulations, as are referred, have to be fulfilled by the importers of goods. These are not applicable to the domestic importers. Upon perusal of Condition no.29, we are satisfied that the Tribunal's factual

conclusion does not raise any substantial question of law. Once the Revenue does not dispute that the assessee is a domestic manufacturer and has to satisfy only one of those conditions, particularly that the supply must be of goods in relation to contracts awarded under international competitive bidding procedure, then that condition is squarely satisfied. The condition such as Condition no.29 which pertains to an importer of the goods need not be, in the given facts, satisfied by the domestic importer and that is the conclusion reached by the Tribunal.

9. We do not see how any larger or wider controversy arises from these admitted facts. The conclusion of the Tribunal cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. The appeal, therefore, does not raise any substantial question of law. It is accordingly dismissed with no order as to costs.

(S.C.DHARMADHIKARI, J.)

(B.P.COLABAWALLA, J.)

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