

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 34411 of 2013

and

M.P. Nos. 1 & 3 of 2013

M/s. Manali Petrochemicals Limited,
Represented by Mr. S. Vasudevan,
Chief Financial Officer & Company Secretary,
Ponneri High Road, Manali,
Chennai - 600 068. ... Petitioner

Vs

1. Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Economic Affairs,
New Delhi.
2. Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Economic Affairs,
New Delhi.
3. Directorate of Hydrocarbons,
Represented by its Director General,
Ministry of Oil & Natural Gas,
Plot No.2, OI DB Bhavan Sector 73,
Noida.
4. The Commissioner of Central Excise,
Large Taxpayer Unit,
Government of India,
Ministry of Finance,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai - 600 101.
5. M/s. Oil & Natural Gas Corporation Limited,
Represented by Managing Director,
South Tower, Scope Minar,
Lakshmi Nagar, Delhi - 110 092. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records relating to the Order passed by the Third Respondent vide their Letter DGH/EC/MPL/Clarify/2013 dated 16.09.2013, rejecting the request of the Petitioner for issuance of Certificate vide their representation Reference No.EX-ONGC/2013-2014, dated 03.09.2011, quash the same and consequently direct the Third Respondent to issue the Certificate in terms of the Central Excise and Custom Notifications so as to enable the Petitioner to claim exemption from central excise duty under Notification No.12/2012-CE, dated 17.03.2012 (Sl.No.336) (Previously S.No.91 of Notification No.06/2006-CE, dated 01.03.2006), for clearance of 2824 Mts of Polyol Grade II to the Fifth Respondent viz., M/s.Oil & Natural Gas Corporation Limited (ONGC).

For Petitioner : Mr. R. Parthasarathy

For R1 - R3 : Mr. K. Gunasekar
Standing Panel Counsel (Government)

For R4 : Mr. A.P. Srinivas
Senior Standing Counsel

For R5 : Mr. Mani Sundara Gopal

ORDER

The Petitioner has filed the present writ petition seeking for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the Order passed by the Third Respondent vide their Letter DGH/EC/MPL/Clarify/2013 dated 16.09.2013, rejecting the request of the Petitioner for issuance of Certificate vide their representation Reference No.EX-ONGC/2013-2014, dated 03.09.2011, quash the same and consequently direct the Third Respondent to issue the Certificate in terms of the Central Excise and Custom Notifications so as to enable the Petitioner to claim exemption from central excise duty under Notification No.12/2012-CE, dated 17.03.2012 (Sl.No.336) (Previously S.No.91 of Notification No.06/2006-CE, dated 01.03.2006), for clearance of 2824 Mts of Polyol Grade II to the Fifth Respondent viz., M/s.Oil & Natural Gas Corporation Limited (ONGC).

2. The Petitioner has supplied Propylene Oxide, Propylene Glycol and Polyols to M/s.Oil & Natural Gas Corporation Limited(ONGC) - the Fifth Respondent Respondent herein under an International Competitive bidding. The Petitioner availed the benefit of exemption in Notification No.6/2006/CE, Sl.No.91, dated 01.03.2006 r/w Condition No.19. In terms of the above notification, all goods supplied against the International Competitive Bidding (ICB) were exempted from

Central Excise Duty subject to Condition No.19 stipulated therein which reads as under:-

"19. If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India."

Since the identical goods are specifically exempted under Customs Notification vide Notification No.21/2002-Cus, dated 01.03.2002 vide Sl.No.214 r/w Condition No.29, the Petitioner availed the benefit of the corresponding exemption notification referred to supra.

3. The relevant portion of the Customs Notification which exempts Petroleum products, reads as under:-

Table

S.No	Chapter or Heading No. or Subheading No.	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
				-	-

214	84 or any other Chapter	Goods specified in List 12 required in connection with petroleum operations undertaken under petroleum exploration licenses or mining leases, as the case may be, issued or renewed after the 1 st of April, 1999 and granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis	Nil	Nil	29
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General Exemption No.107

"29. (c) Where the importer is a Sub-contractor, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, the following, namely:-

(i) a Certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the licenses or mining leases, as the case may be, referred to in that clause and containing the name of such Sub-contractor,

(ii) an affidavit to the effect that such Sub-contractor is a bona fide Sub-contractor of the licensee or lessee, as the case may be,

(iii) an undertaking from such licensee or lessee, as the case may be, binding him to pay any duty, fine or penalty that may become payable, if any of the conditions of this notification are not complied with by such Sub-contractor or licensee or lessee, as the case may be, and

(iv) a certificate, in the case of a petroleum exploration license or mining lease, as the case may be, issued or renewed after the 1st of April 1999, by the Government of India or any State Government on nomination basis, that no foreign exchange remittance is made for the import of such goods undertaken by the Sub-contractor on behalf of the licensee or lessee, as the case may be:

Provided that nothing contained in this Sub-clause shall apply if such Sub-contractor is an Indian Company or Companies."

4. The Petitioner had cleared the goods without payment of duty. However, the Fourth Respondent under the Ministry of Finance and Revenue Department issued a Show Cause Notice to the Petitioner on 07.02.2013 stating that the Petitioner had not obtained appropriate certificate as contemplated under Notification No.21/2002-Cus, dated 01.03.2002 vide Sl.No.214 r/w Condition No.29 from the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas. The Show Cause Notice demanded a sum of Rs.3,80,89,090/- (Rupees Three Crore Eighty Lakhs Eighty Nine Thousand and thirty only) for the clearance effected by the Petitioner between January 2012-2013, November 2012-2013 (January - November 2012-2013). Since the issue had arisen, for the subsequent clearances, the Petitioner had obtained certificate in time.

5. The Petitioner had originally filed the writ petition challenging the Show Cause Notice. Later the Petitioner altered the prayer in the Writ Petition to direct the Third Respondent-Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, to issue appropriate certificate which was rejected by a communication dated 16.09.2013 bearing Reference No.DGH/EC/MPL/Clarify/2013. The Third Respondent-Directorate General of Hydrocarbons, Ministry of Oil & Gas has informed the Petitioner that no certificate

can be issued in view of the reasons already communicated to the Fifth Respondent-ONGC vide a letter dated 21.02.2013. Earlier, the Fifth Respondent(ONGC), the Recipient of the project in question had approached the Third Respondent to issue appropriate Certificate.

6. The Petitioner has specifically taken the plea that the Third Respondent has resorted to the discrimination inasmuch as under similar circumstances, similarly placed person have been issued post-facto certificate in the case of M/s.Larsen & Turbo Ltd Vs M/s.Audco India Ltd who supplied for and on behalf the Main Contractor as M/s.Larsen & Turbo Ltd. The Petitioner has specifically raised ground to that effect in ground (B) which read as under:

"(B). It is submitted that DGH has issued the Certificate to the operator (ONGC) on 13.08.2013 for the same product, because the operator has submitted all the documents in DGH for examination to get the Certificate prior to effecting supply and the Certificate has been issued. On the other hand, in the contract in question, the operator has not submitted the document in DGH for examination prior to effecting supply and therefore, the Certificate cannot be issued to the writ petitioner."

7. The Third Respondent in their counter affidavit, have stated that no certificate can be issued to the Petitioner and in response to ground (D) have submitted as follows:-

"(D). It is submitted that issuance of Certificate as mentioned in this paragraph pertains to year 2009. The records are being traced and can comment only after tracing of records."

8. The learned counsel for the Petitioner has also relied upon the decision of the Bombay High Court rendered in Commissioner of Central Excise Vs Kent Introl Private Limited, 2016 (331) E.L.T 77 wherein, the Division Bench of the Bombay High Court while dealing with the same Notification No.6/2006/CE, Sl.No.91, dated 01.03.2006 read with Condition No.19 and Notification No.21/2002-Cus, dated 01.03.2002 vide Sl.No.214 read with Condition No.29 has concluded that there is no necessity for the domestic suppliers to obtain certificate from a person like the Third Respondent for availing the benefit of exemption under Notification No.6/2006/CE, Sl.No.91, dated 01.03.2006 read with Condition No.19.

9. The relevant portion of the order of the Bombay High Court reads as under:-

"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 No.29(c)(i) to (iii) is 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 manufacturer). 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 manufacturer) and that is the conclusion reached by the Tribunal."

10. The learned counsel further submits that the issue was also before the Appellate Tribunal in the case of Audco India Ltd Vs Commissioner of Central Excise, Chennai - 3, 2013 (297) E.L.T. 374 wherein, the Tribunal has also held that "Post-facto Certificate" can also be produced. The relevant passage of the Tribunal which reads as under:

"13. When goods are imported by the contractor or sub-contractor, the end-use verification becomes easy with reference to the auditing the books of account of these persons. A mechanism will be required to ensure proper end-use in the case of goods manufactured in India and supplied to such contractor or sub-contractor which has not been prescribed in the excise notification. Now the option before us is to hold that excise duty exemption under such notification will not be applicable at all to any clearances by a strict interpretation of the conditions as canvassed by Revenue or to hold that excise duty exemption is to be made available subject to necessary changes read into the conditions prescribed under customs notification. The former interpretation is not justified because to our mind it is implied that the condition prescribed in Customs Notification is to be read mutatis mutandis for excise exemption. Once the latter proposition is agreed to we are of the

view that the correct interpretation is that the goods should have been supplied to a contractor or a sub-contractor who has used the goods in oil exploration activity, the exemption should be available. In the present case, such condition has been satisfied in the case of supplies to M/s. Reliance Industries Ltd., though after clearance.

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16. In the facts of this case there is justifiable reason to hold so because there can be some doubt about the time of production of certificate for excisable goods because the condition comes through adaption of condition prescribed in a customs notification. This case involves a substantial right of the appellant to claim an exemption intended for import substitution at competitive prices we are of the view that the exemption cannot be denied for the reason that the certificate is produced later. We have not verified the certificates in detail. We are remitting the matter to the adjudicating authority to cause verification whether the certificates produced later meet the requirement of the notification.

17. Thus we are of the view that the exemption is available only in cases where necessary certificates to ensure its proper end-use is produced which has been done by the appellant only in the case of supplies to Reliance Industries Ltd Oil India refusing to give certificate that the goods were used for the specified purpose and the appellant has not made any effort to get such certificate from Jindal Power Ltd. So the inference is that the goods were not used for the purpose for which exemption is granted and the exemption is claimed for the sole reason that it fits into the description of goods as specified under S.No.15 of list 12 of Customs Notification 21/2002-Cus."

11. The learned counsel for the Petitioner further submits that the West Zonal Bench of the Tribunal had also followed the decision of the Bombay High Court referred to supra and has independently considered the decision of the Bombay High Court and held as under:-

"3.2. As regards the Condition No.29 of Notification 21/2002-Cus., the said condition pertains to importer of the goods and has to be satisfied by the importers. Therefore, the said condition has no relevance or

applicability as far as the domestic manufacturers are concerned. In view of the above, the findings of the appellate authorities in the impugned orders that the goods have not been supplied against International Competitive Bidding or DGHC essentiality certificate is required, is not sustainable in law.

3.3. ...

4. ...

5. ...

5. ...

5.2. The Customs 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 to 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 referred 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. This Tribunal's decision in the case of CST (cited supra) also confirms this view."

12. Mr. Mani Sundara Gopal, learned counsel for the Fifth Respondent submits that no prejudice would be caused as the goods were supplied by the Petitioner under International Competitive Bidding and the same is exempted and the clear should be treated on par with deemed export and therefore such exemptions granted by the Government should not whittled down by the Authority. He further submits that in the case of supplier of another party namely Audco India Limited, the Respondents have already issued similar certificates to the sub-contractor therein for relevant years and therefore there is no justification on the part of the Third Respondent in refusing to issue the certificate without assigning any

reasons is a case of clear discrimination. He further reiterates that all the conditions of the customs notification cannot be imported into and therefore exemption which was available to the Petitioner should not be denied and the Fifth Respondent Company (ONGC) undertaking should not be burdened with unnecessary duty contrary to Notification No.6/2006/CE, Sl.No.91, dated 01.03.2006 read with Condition No.19 and Notification No.12/2012/CE, Sl.No.336, dated 17.03.2012 which applies to all supplies made under International Competitive Bidding.

13. Per contra, the learned counsel for the Third Respondent submits that the Petitioner ought to have been vigilant and obtained certificate then and there before effecting the clearance. The Petitioner failed to comply and approached the Third Respondent for issuance of appropriate certificate. The Third Respondent cannot be compelled to give Post-facto Certificate.

14. Heard, the learned counsel for the Petitioner and learned counsel for the Respondents.

15. SL.No 91 to the Notification No. 6/2006-CA dated exempts all goods supplied against international competitive bidding from payment of excise duty specified under the 1st schedule to the Central Excise Tariff Act, 1985 as is in excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the table and subject to relevant conditions specified in the annexure to the said notification, and condition number of which is referred to in the corresponding entry in column (5) of the aforesaid.

16. In column No. (4) to the table to the above notification, the rate of tax/duty that has been prescribed is nil. Condition No 19 which has been already extracted in paragraph 2 of this order merely stipulates that such goods also should be exempt from customs duty leviable under the 1st schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under Section 3 of the Customs Tariff Act.

17. The corresponding notification which permits an importer to clear the goods at the rate of duty is in Notification No. 21/2002-Cus dated 1.3.2002. Serial No. 214 and Condition No 29 to the said notification has been extracted paragraph 3 of this order. The said notification exempts an importer or sub-contractor from both customs duty leviable under the 1st schedule to the Customs Tariff Act, 1985 and additional duty of customs leviable under subsection (1) of the Customs Tariff Act, as is in excess of the rate specified in the corresponding entry in column 5 of the table to be said notification.

18. In case of an importer who sub-contractor, the importer has to produce at the time of import a certificate from the duly authorised officer of the Directorate General of Hydrocarbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect that the imported goods are required for petroleum operation referred to in clause (a) and have been imported under licenses or mining leases as the case may be, referred to in that clause and containing the name of the subcontractor in Condition No. 29 to the above notification. There are other conditions also which are to be complied by an importer who is a sub-contractor for availing the benefit of the above notification.

19. Question therefore is whether the above conditions can be imported in the context of Notification No 6/2006-CE dated 1.3.2002 and Notification No. 12/2012-CE dated 17.3.2012. The Bombay High Court in Commissioner of Central Excise Versus Kent Introl Private Limited 2016 (331) ELT 77 has upheld the new taken by the Tribunal that conditions No. 29 of Notification No. 21./2002-Cus dated 1.3.2002 need not be satisfied by a domestic manufacturer and supplier. There are also divergent practice adopted by the Third Respondent in granting post-facto certificate to the sub contractors in the domestic market. Therefore, there appears to be fair amount of discrimination and different treatment meted out by the Third Respondent while rejecting the application filed by the petitioner for grant of the certificate. The consequence of such denial has resulted in collateral proceedings before the First Respondent seeking to deny the benefit of exemption claim by the Petitioner vide Show Cause Notice No. LTUC/23/2013 (C) dated 7.2.2013 to deny the benefit of the above exemption to the Petitioner for the clearance is affected from January 2012 to November 2012.

20. In *Thermax (P) Ltd. v. Collector of Customs*, (1992) 4 SCC 440 while dealing with a converse situation regarding payment of additional duty of customs equivalent to the central excise duty on the imported goods, the Hon'ble Supreme Court observed as under:-

"11. It will at once be seen that there is nothing in the scheme of the Rule which makes it inapplicable to an importer of goods. The assessee here has imported the goods and is selling them for use in a factory, a use which qualifies for the concession under the Rule 8 notifications. The types of use specified in the concessions notified could be of any kind and, even in the notifications under our consideration, they are many and varied. In respect of items falling under serial Nos. 3 and 8, in particular, the actual users may be

private individuals or authorities and need not necessarily be manufacturers using the goods in question in an "industrial process" in a narrow sense of that term. For instance, any computer room, hospital or factory purchasing parts of refrigerating and air-conditioning appliances and machinery for use in the computer room, hospital or factory would be entitled to claim the concession by following the prescribed procedure. Only, for claiming a concession in excise duty the user should be the manufacturer himself or he must have made the purchase from a manufacturer liable to pay excise duty on the item whereas in regard to a claim for CVD concession, the supplier will be an importer. The latter will be entitled to sell the goods at the concessional rate of duty (or at nil rate if there is an exemption) if the purchaser from him who puts the goods to the specified use (whether a manufacturer or not) fulfils the requirements of Rule 192. Since the concession under Rule 192 turns only on the nature and use to which the goods are put by the user or purchaser thereof and on whether he has gone through the procedure outlined in Chapter X, it would not be correct to deny it to a supplier of such goods on the ground that he is an importer and not a manufacturer. That aspect is provided for by Section 3(1) of C.T. Act which specifically mandates that the CVD will be equal to the excise duty for the time being leviable on a like article if produced or manufactured in India. In other words, we have to forget that the goods are imported, imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event. Thus, if the person using the goods is entitled to the remission, the importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund. In our opinion, the Tribunal was in error in holding that the assessee could not get a refund because the procedure of Chapter X of the Rules is inapplicable to importers as such."

21. In CCE v. Hari Chand Shri Gopal, (2011) 1 SCC 236 at page 250, the Hon'ble Supreme Court observed as under:-

"38. We will now examine whether the judgments in Thermax (P) Ltd. [(1992) 4

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SCC 440] and J.K. Synthetics [(2000) 10 SCC 393] require reconsideration. In Thermax (P) Ltd. [(1992) 4 SCC 440] the assessee had cleared imported goods after paying the custom duty as well as the additional duty (CVD). Later, it was felt that it should have claimed the concession in respect of CVD on the strength of Notifications Nos. 63/85 and 93/76 issued under Section 8 of the Tariff Act. Therefore, an application for refund of CVD was submitted which was rejected by the Assistant Collector, but was allowed by the Collector in appeal. On appeal, the Tribunal took the view that the assessee had failed to satisfy the conditions laid down in Chapter X. On appeal by the assessee, this Court took the view that the Tribunal was in error in holding that the assessee could not get refund because the procedure of Chapter X of the Excise Rules was not complied with. This Court mainly relied on the letter of the Board dated 27-7-1987 wherein it was stated that whenever intended use of material could be established by the importer, the benefit of exemption notification should not be denied on the imported goods only because the procedural condition falling under Chapter X was not complied with. It is under such circumstances that this Court allowed the claim of the assessee and ordered refund.

39. Reasoning of this Court in Thermax (P) Ltd. [(1992) 4 SCC 440] is inapplicable to the facts of the present case. In the instant case, we are not concerned with the goods imported from outside the country. Both the suppliers of specified intermediate goods as well as manufactures of specified final products are situated in India and are obliged to follow various statutory provisions, not only for the manufacture of excisable goods, but also for claiming exemption under the Notification dated 11-8-1994. Consequently, the plea of intended use of the materials cannot be applied to the facts of the present case.

41. Consequently, the decisions of this Court in Thermax (P) Ltd. [(1992) 4

SCC 440] and J.K. Synthetics [(2000) 10 SCC 393] cannot be applied in all facts situation and it is declared that the findings recorded in those decisions would be confined to the facts of those cases."

22. Thus, the reasoning of the Hon'ble Supreme Court in Thermax (P) Ltd. [(1992) 4 SCC 440 has not been viewed differently by the Hon'ble Supreme Court in the case of CCE Vs Hari Chand Shri Gopal, (2011) 1 SCC 236.

23. In Indian Oil Corporation Ltd. Vs CCE, 2012(276) ELT 145 (SC), the Hon'ble Supreme Court has partly departed from the view in Thermax case by construing the exemption notification strictly. The exemption was conditional. Relevant condition in the notification read as under:-

Provided that where any such exemption is subject to the intended use, the exemption in such case shall be subject to the following conditions namely :-

(i) That it is proved to the satisfaction of an officer not below the rank of the Assistant Collector of Central Excise that such goods are used for the intended use specified in Column (5) of the said Table; and

(ii) Where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944, is followed.

24. The Court observed as follows:-

Thus, the proviso makes it clear that for availing the exemption two conditions must be satisfied : First, that it is proved to the satisfaction of the excise officer that the goods are used for intended use specified in Column (5) of the Table annexed to the exemption notification and second, where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is followed. We cannot, therefore, accept the contention of the learned counsel of the appellant that if the first condition is satisfied, i.e. it is proved to the satisfaction of the Central Excise officer that the goods are used for the intended use, the exemption has to be granted. In our considered opinion, unless the second condition is also satisfied, i.e. the procedure set out in Chapter X of the Rules is followed where the use of the goods is elsewhere than

in the factory of production, the exemption cannot be granted under the exemption notification.

25. There the Appellant/Petitioner produced reduced crude oil (for short "RCO") and claimed the benefit of exemption Notification No. 75/84-CE dated 1-3-1984. The said notification exempted goods described in Column 3 of the Table annexed to the notification from so much of the duty of excise as is specified in the notification subject to the intended use, or the conditions, if any, laid down in Column 5 of the Table annexed to the notification. RCO, if produced from indigenous crude oil subject to intended use as fuel for generation of electrical energy by electricity undertakings owned or controlled by the Central Government or any State Government or any State Electricity Board or any local authority or any licensee under Part II of the Electricity Act, 1910 except those who produce electrical energy not for sale but for their own consumption or for supply to their own undertakings was exempted.

26. The proviso to the notification stated two conditions subject to which the exemption was granted and one of the conditions was that where the intended use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is followed.

27. Under Chapter Rule 192 in Chapter X of the Rules provided inter alia that where the Central Government has by notification under Rule 8 sanctioned the remission of duty on excisable goods other than salt used in a specified industrial process and it is necessary for this purpose to obtain an excise registration certificate, he should submit the requisite application along with the proof of payment of the registration fee and shall then be granted a registration certificate in the proper form. Rule 192 further provided that the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate.

28. RCO was not to be used in the factory of the Appellant/Petitioner but at the place of generation of electricity by the Ahmedabad Electricity Company Ltd. Hence, the second condition laid down in the proviso was also to be complied with. Rule 192 of Chapter X of the Rules is quoted herein below :-

"RULE 192. Application for concession. - Where the Central Government has, by notification under rule 8, or section 5A of the Act, as the case may be, sanctioned the remission of duty on excisable goods other than salt, used in a specified industrial process, any person wishing to obtain remission of duty on such goods, shall make application to the Collector in

the proper Form stating the estimated annual quantity of the excisable goods required and the purpose for and the manner in which it is intended to use them and declaring that the goods will be used for such purpose and in such manner. If the Collector is satisfied that the applicant is a person to whom the concession can be granted without danger to the revenue, and if he is satisfied, either by personal inspection or by that of an officer subordinate to him that the premises are suitable and contain a secure store-room suitable for the storage of the goods, and if the applicant agrees to bear the cost of such establishment as the Collector may consider necessary for supervising operation in his premises for the purposes of this Chapter, the Collector may grant the application, and the applicant shall then enter into a bond in the proper Form with such surety or sufficient security, in such amount and under such conditions as the Collector approves. Where, for this purpose, it is necessary for the applicant to obtain an Excise registration certificate, he shall submit the requisite application along with the proof for payment of registration fee and shall then be granted a registration certificate in the proper Form. The concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate :

Provided that, in the event of death, insolvency or insufficiency of the surety, or where the amount of the bond is inadequate, the Collector may, in his discretion, demand a fresh bond; and may, if the security furnished for a bond is not adequate, demand additional security." The language of Rule 192 of Chapter X of the Rules is clear that for availing concession from excise duty on excisable goods used in a specified industrial process, a person must obtain a registration certificate from the Collector and that "the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate".

29. There the registration certificate of the Appellant/Petitioner expired on 31-12-1995. Hence, the exemption granted under the notification ceased on 31-12-1995. The fresh registration certificate in favour of the Ahmedabad Electricity Company Ltd., was issued on 26-6-1996. The Court observed that we find on a reading of the copy of the CT-2 certificate annexed as Annexure P5 that the registration certificate was not for any period prior to 26-6-1996. As the procedure laid down in Rule 192 of Chapter X of the Rules has not been complied with, the appellant is not entitled to avail the exemption of excise duty under the exemption notification during the period from 1-1-1996 to 25-6-1996.

30. This view was affirmed by a Constitutional Bench of the Hon'ble Supreme Court in Commissioner of Central Excise Vs Dilip Kumar & Company , 2018(361) ELT 577.

31. From a reading of the above decision it is clear that all these cases except in Thermax case dealt with manufacturers who failed to comply with the requirement of the notifications. Therefore, the benefit of notification was denied to them. The test laid down by the Hon'ble Supreme Court in Thermax case has not been dissented by the Hon'ble Supreme Court in these cases though if one were to read the views expressed in the case of Indian Oil Corporation Ltd. Vs CCE, 2012(276) ELT 145 (SC) in isolation it may give an impression that Thermax has been over ruled.

32. In Thermax case the importer wanted to avail the benefit of excise notification for payment of customs duty under a customs notification. The importer could not be comply with condition in the Central Excise Notification. The Hon'ble Supreme Court there held that "we have to forget that the goods are imported, imagine that the importer had manufactured the goods in India and determine the amount of excise duty that he would have been called upon to pay in that event. Thus, if the person using the goods is entitled to the remission, the importer will be entitled to say that the CVD should only be the amount of concessional duty and, if he has paid more, will be entitled to ask for a refund. In our opinion, the Tribunal was in error in holding that the assessee could not get a refund because the procedure of Chapter X of the Rules is inapplicable to importers as such."

33. In the present case, the situation is converse. The Petitioner is a local supplier-manufacturer who has claimed the benefit of excise notification in terms of customs notification which contemplates issue of relevant certificate by the Third Respondent.

34. From a reading of Serial No. 91 and condition No.19 to Notification No. 6/2006-CE dated 1.3.2006 it is clear that clearance of all goods are exempted if such goods are exempted from payment of Customs duty leviable under the 1st schedule to the Customs Tariff Act, 1975 and additional duty of customs under section 3 of the said Act when imported into India.

35. Condition No.29 (c) Customs Notification No. 21/2002-Cus dated 1.3.2002 which is applicable to imported to goods falling under chapter 84 or any other chapter contemplates production of a certificate from a duly authorised officer of the Directorate General of Hydrocarbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect that the imported goods are required for petroleum operation referred to in clause (a) and have been imported under the

license or mining leases as the case may be, referred to in that clause and containing the name of the subcontractor.

36. These conditions obviously are applicable only to import by a sub-contractor and not to domestic producer like Petitioner who supplies the petroleum products for the same purpose specified in Customs Notification No. 21/2002-Cus dated 1.3.2002. Therefore, these conditions cannot be imported in the case of domestic suppliers. Though such certificates are not required, the fact that the Third Respondent has issued certificate for the subsequent period also shows that the Petitioner was indeed eligible for certificate. The fact that such certificate have been given to other domestic suppliers post facto shows that these certificates are not mandatory in the case of domestic supplies.

37. There is also no dispute that the goods were supplied to the Fifth Respondent as the 5th respondent has also applied for clarification from the Third Respondent in respect of supplies effected by the petitioner to the Fifth Respondent.

38. Under the circumstances, I am of the view that production of certificate by the Petitioner in the facts of the case are not necessary. Suffice to state that the Petitioner being a supplier of petroleum products to the First Respondent under an International Competitive Bidding is entitled to supply without payment of excise duty. The Petitioner is not required to produce any certificate from the Third Respondent as a certificate is relevant only to subcontractor importing such goods for such supplies.

39. In view of the above observations, this Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

arb

To

1. The Secretary, Government of India,
Ministry of Finance,
Department of Economic Affairs,

<https://hcservices.ecourts.gov.in/hcservices/>
New Delhi.

2. The Secretary, Government of India,
Ministry of Finance,
Department of Economic Affairs,
New Delhi.

3. The Director General,
Directorate of Hydrocarbons,
Ministry of Oil & Natural Gas,
Plot No.2, OIDB Bhavan Sector 73,
Noida.

4. The Commissioner of Central Excise,
Large Taxpayer Unit,
Government of India,
Ministry of Finance,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar, Western Extension,
Chennai - 600 101.

5. The Managing Director,
M/s. Oil & Natural Gas Corporation Limited,
South Tower, Scope Minar,
Lakshmi Nagar, Delhi - 110 092.

+1cc to Mr.Lakshmi Narayanan , Advocate SR.No. 104342

+1cc to Mr.K.Gunasekaran , Advocate SR.No. 104642

+1cc to Mr.Mani Sundara Gopal , Advocate SR.No.104352

+1cc to Mr.A.P. Srinivas , Advocate SR.No.104244

W.P. No. 34411 of 2013
and

M.P. Nos. 1 & 3 of 2013

A.SK(24/02/2020)

सत्यमेव जयते

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