

In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

Appeal No.E/162/2011-DB; E/MA(EXTN)/16098/2014, E/CO/105/2011
[Arising out of OIO No.L16/DEM/DAMAN/2010, dt.01.11.2010, passed by Commissioner
of Central Excise & Service Tax, Vapi]

M/s Dressers Rand India Pvt. Ltd Appellant
Vs
Commissioner of C.Ex. & Service Tax, Daman Respondent

AND

Appeal No.E/367/2011-DB
Commissioner of C.Ex. & Service Tax, Appellant
Daman
Vs
M/s Dressers Rand India Pvt. Ltd Respondent

Represented by:

For Assessee: Shri S. Narayanan, Advocate

For Revenue: Shri Sameer Chitkara, A.R. (Additional Commissioner)

For approval and signature:

Hon ble Mr. P.K. Das, Member (Judicial)

Hon ble Mr. P.M. Saleem, Member (Technical)

1. Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether their Lordships wish to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental authorities? : Yes

CORAM:

HON BLE MR. P.K. DAS, MEMBER (JUDICIAL)

HON BLE MR. P.M. SALEEM, MEMBER (TECHNICAL)

Date of Hearing/Decision: 06.01.2016

Order No. A/10015-10016/2016, dt.06.01.2016

Per: P.K. Das

The relevant facts of the case, in brief, are that the Assesseees were engaged in the manufacture of Gas Compressor package, classifiable under Sub-heading No.8414.86 of the Schedule to the Central Excise Tariff Act, 1985. They supplied Gas Compressors to M/s Oil & Natural Gas Corporation Ltd (ONGC) on the basis of the tenders contract awarded to M/s Engineers India Ltd and M/s Efficient Engineers India Pvt Ltd, based on international competitive biddings for the supply to the projects viz. D1 Well-cum-water injection platform

project, Sagar Laxmi and for the supply of the compressors to Mehsana Project. The Assessee cleared the goods without payment of duty, by availing the benefit of exemption Notification No.6/2002-CE, dt.01.03.2002 as amended. By the impugned order, the Adjudicating authority confirmed the demand of duty alongwith interest and imposed penalty, denying the benefit of exemption Notification No.6/2002-CE (supra) and allowed the option to pay penalty 25% of duty alongwith full amount of duty and interest within 30 days of the communication of the order under Section 11AC of the Central Excise Act 1944. The assessee filed appeal against the demand of duty, interest and penalty. Revenue filed appeal for extending option to pay penalty 25% of duty alongwith full duty and interest under Section 11AC of the Act.

2. The learned Advocate on behalf of the Appellant drew the attention of the Bench to Sr.No.301 of the Table appended to the said notification and condition No.64 of the said notification. He submits that they have supplied the Compressors, which are exempted from the duties of Customs, and therefore, there is no reason to deny the benefit of exemption notification. He also submits that the Adjudicating authority denied the benefit on the ground that the components used in the Compressors were cleared on payment of Customs duty. Without prejudice, it is submitted that they have used the indigenous components for manufacture of the Compressors. On any event, the use of the imported components cannot be the ground to deny the benefit of exemption notification, which is not mentioned in the condition of the notification.

3. The learned Authorised Representative on behalf of the Revenue reiterates the findings of the Adjudicating authority. He submits that the Appellant used imported components, where the Customs duty was paid, in the manufacture of Compressors and therefore, they are not eligible to avail the benefit of exemption notification. He drew the attention of the Bench to the relevant portion of the Adjudication order.

4. After hearing both the sides and on perusal of the records, we reproduce the relevant portion of the table appended to the notification 6/2002-CE dated 1.3.2007 as amended as under:-

(1)	(2)	(3)	(4)	(5)	(6)
301.	Any Chapter	All goods supplied against International Competitive Bidding.	Nil	Nil	64

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

On plain reading of Serial No 301 of the Table the said notification, it is clear that all goods under any Chapter supplied against international competitive biddings would be Nil rate of duty. The Condition No.64 provides that if the goods as specified in the Sr.No.301 are exempted from the Customs duty, it would be within the purview of exemption notification. The Adjudicating authority observed that the Assessee had imported the components of gas compressors on payment of duties of Customs, which were used in the manufacture of gas compressor and the later were cleared ultimately to the buyers concerned without payment of Central Excise duty. It is further observed that as per the said notification, the goods as specified in list 12 thereof, will attract Nil duty under the First Schedule of the CTA, 1975

and under Section 3 supra. Gas compressor is one of the goods which has been mentioned in the said list and is eligible for the said exemption from the duties of Customs. The components of gas compressor have not been notified in the said list and as such, it is concluded that such components have suffered Customs duty at the time of their import. As such, the assessee is not eligible for Central Excise duty exemption under the said Notification No.6/2002-CE, dt.01.03.2002, as amended.

5. We are unable to accept the findings of the Adjudicating authority. We have already observed that the Condition of the notification is that the goods covered in any Chapter supplied through international competitive biddings is exempted, subject to the conditions, if the goods are exempted from custom duty. In the present case, the Adjudicating authority has accepted the fact that the Compressors are exempted from Customs duty and therefore, there is no reason to deny the benefit of exemption notification.

6. In the earlier occasion, the Bench directed the Assessee to produce the evidence that the goods were supplied to the international biddings. In this context, the learned Advocate, today, placed the certificates dt.16.11.2015 and dt.20.11.2015 of ONGC which are reproduced below:-

Oil and Natural Gas Corporation Ltd
Offshore Works Division
11 High, 5th Floor, Bandra Sion Link Road, Mumbai 400017

To Whom It May Concern:

We, Oil And Natural Gas Corporation Ltd having our registered office located at Jeevan Bharati Tower-II, 124 Connaught Circus, New Delhi-110 001, floated the Tender No.MR/OW/MM/D-1WWIPP/05(R)/2003, based on International competitive bidding and M/s Engineers India Limited, New Delhi was awarded contract bearing No.MR/OW/MM/D-1 WWIPP/05 dated 30th July 2004 based on such International competitive bidding, for the supplies to the Project viz.D 1 Well-cum-water injection platform project, Sagar Laxmi.

Project: D 1 Well-cum-water Sd/-
Injection Platform Project DGM (E) PM, D-1 Project,
Place: Mumbai ONGC, Mumbai
Date: 16.11.2015

Oil and Natural Gas Corporation Ltd
Offshore Works Division
11 High, 5th Floor, Bandra Sion Link Road, Mumbai 400017

To Whom It May Concern:

We, Oil And Natural Gas Corporation Ltd having our registered office located at Jeevan Bharati Tower-II, 124 Connaught Circus, New Delhi-110 001, floated the Tender No.E1CNC04001, based on International competitive bidding and M/s Efficient Engineers (I) Pvt. Ltd. Ahmedabad, was awarded order as per Purchase Order No.4010014994 dated 26.04.2005 based on such International competitive bidding, for the supplies of Compressors to our Mehsana Project.

Project: Mehsana, Gujarat Sd/-
DGM (MM)-I/C. MM
Date: 20.11.2015 ONGC, Mehsana

Thus, there is no dispute that the goods were supplied to the international competitive biddings and the Compressors are exempted from the Customs duty. Therefore, denial of exemption cannot be sustained.

7. In view of the above discussion, the impugned orders cannot be sustained and the same are set aside. The appeal filed by the Assessee is allowed. The cross objection gets disposed of. The application for extension of stay order is dismissed as infructuous. As the impugned order cannot be sustained, the appeal filed by the Revenue is rejected.

(Dictated & Pronounced in Court)

(P.M. Saleem) (P.K. Das)
Member (Technical) Member (Judicial)