

FAX : 040-23312246
TEL : 040-23312247

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH: HYDERABAD
1st Floor, HMWSSB Building, Rear Portion, Khairathabad, Hyderabad
Tele No: 040-23312247, Fax No: 040-23312246

Dated: 16/04/2019

File No. :- E/1173/2012, E/1798/2011
In the matter of :-

C.C.E. & S.T.-TIRUPATI
(Appellant as per address below)

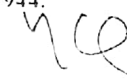
(Appellant)

Vs

Ivrel Infrastructure And Projects Ltd
(Respondent as per address below)

(Respondent)

I am directed to transmit herewith a certified copy of Order No. : A/30465-30466/2019 dated :
08/04/2019 passed by the Tribunal under section 35-C(1) of the Central Excise and Sait Act, 1944.


Assistant Registrar

S.NO, Case Number, Name & Address of Appellant :-

- 1 E/1173/2012 C.C.E. & S.T.-TIRUPATI
9/86-A...BEHIND WEST CHURCH COMPOUND,
AMARAVATHI NAGAR,
M.R.PALLI,
AP-517502
- 2 E/1798/2011 C.C.E. & S.T.-TIRUPATI
9/86-A...BEHIND WEST CHURCH COMPOUND,
AMARAVATHI NAGAR,
M.R.PALLI,
AP-517502

S.NO, Case Number, Name & Address of Respondent :-

- 1 E/1173/2012 IVRCL INFRASTRUCTURE AND PROJECTS LTD
REGISTERED OFFICE, M-22/3RT,
VIJAYNAGAR COLONY,
HYDERABAD-500057
- 2 E/1798/2011 Ivrel Infrastructure And Projects Ltd
M-22/3RT, VIJAYANAGAR COLONY,
HYDERABAD.-500 057

Copy To :-

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9. The ICFAI Society, Hyderabad-500082.
10. Office Copy
11. Guard File
12. ~~Advocate^(s) / Consultant^(s) / Representative:-~~

Sr. G. Natarajan, Adv.
SWAMY ASSOCIATES
FLAT NO. 307, BLOCK-B SRI SAI LAND MARK
STREET NO. 8, HABSIGUDA,
HYDERABAD-500 007.

DB-D-18

Assistant Registrar

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

DIVISION BENCH – COURT NO. 1

Excise Appeal No. 1798 of 2011

(Arising out of **Order-in-Appeal** No. 09/2011 (T) CE, dated 06.04.2011 passed by the
Commissioner of Customs, Central Excise and Service Tax (Appeals), Guntur

**Commissioner of Central Excise,
& Service Tax**

9/86-A, Behind West Church Compound,
Amaravathinagar, M.R. Palle Road,
TIRUPATI - 517 502.
Andhra Pradesh.

..

APPELLANT

VERSUS

IVRCL Infrastructure and Projects Ltd.

M-22/3RT, Vijayanagar Colony,
HYDERABAD - 500 057.
Telangana

..

RESPONDENT

WITH

Excise Appeal No. 1173 of 2012

(Arising out of **Order-in-Appeal** No. 05/2012(T)CE, dated 13.02.2012 passed by the
Commissioner of Customs, Central Excise and Service Tax (Appeals), Guntur

**Commissioner of Central Excise,
& Service Tax**

9/86-A, Behind West Church Compound,
Amaravathinagar, M.R. Palle Road,
TIRUPATI - 517 502.
Andhra Pradesh.

..

APPELLANT

VERSUS

IVRCL Infrastructure and Projects Ltd.

M-22/3RT, Vijayanagar Colony,
HYDERABAD - 500 057.
Telangana

..

RESPONDENT

Appearance

Shri C. Mallikharjun Reddy, Superintendent/AR for the appellant

Shri G. Natarajan, Advocate for the Respondent.

Coram: Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30465-30466/2019

Date of Hearing: 08.04.2019
Date of Decision: 08.04.2019



ORDER PER: MR. P. VENKATA SUBBA RAO

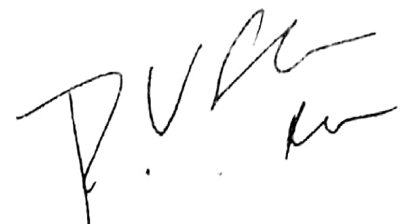
1. These two appeals are filed by the Revenue against the impugned orders as above. Appeal No. E/1798/2011 is filed against Order-in-Appeal No. 09/2011 (T) CE, dated 06.04.2011. Heard both sides and perused the records. The facts of the case in brief are that the respondents herein supplied pipes to various projects processing and supplying water to various bleaching and dyeing units. Such pipes are exempted from payment of Excise Duty vide notification No. 03/2004-CE, dated 08.01.2004, subject to the condition that a certificate is to be issued by the District Collector regarding the use of the pipes in the project. In the instant case, the District Collector Coimbatore had issued the required certificates and appellant claimed the benefit of exemption notification. However, the department was of the opinion that the appellant's supplies were not covered by the exemption notification and at the instance of the Department, the District Collector cancelled the certificates which he had issued and the appellant paid the excise duty and pursued the matter with CBEC. CBEC clarified that the appellant is covered by the exemption notification. Thereafter the appellant obtained fresh certificates from the District Collector and filed a refund claim for the duty already paid by them. A show cause notice was issued on 31.10.2007 proposing to reject the refund claim on various grounds. Order-in-Original No. 06/2008 passed on 29.05.2008 rejecting the refund claim. On appeal, the first appellate authority vide Order-in-Appeal No. 41/2008, dated 18.11.2008 upheld the order of the lower authority. On further appeal, CESTAT vide its passing order dated 02.12.2009 set aside the Order-in-Appeal and remanded the matter back for reconsideration. After reconsidering, the lower authority vide Order-in-Original

No. 35/2010, dated 28.10.2010 again rejected the refund claim. On appeal, the first appellate authority vide Order-in-Appeal No. 09/2011, dated 06.04.2011 held that the respondents are eligible for refund except for some quantity of pipes which were not covered by the certificates issued by the District Collector. Appeal No. E/1798/2011 is filed by the Department against this Order-in-Appeal.

2. Meanwhile, based on the Order-in-Appeal No. 9/2011 of the first appellate authority, the respondents revised their refund claim to Rs. 1,59,24,128/- only and submitted the same to the Assistant Commissioner. Order-in-Original No. 44/2011, dated 17.11.2011 was issued by the Assistant Commissioner sanctioning an amount of Rs. 1,02,13,018/- and rejecting an amount of Rs. 57,03,614/- and further ordering recovery of Rs. 68,72,164/- towards manufacturer's liability under Rule 6 of CCR 2004. Upon appeal, the first appellate authority vide Order-in-Appeal No. 05/2012, dated 13.02.2012, set aside the order-in-original of the lower authority and allowed the appeal of the assessee, thereby sanctioning refund as per revised claim of Rs. 1,59,24,128/- to the respondent assessee. The second appeal by the Revenue No. E/1173/2012 is against this Order-in-Appeal No. 05/2012, dated 13.02.2012.

3. It emerges from the records and submissions made by both the parties that in the first appeal No. E/1798/2011, it is the contention of the department that the fresh certificates issued by the District Collector have no nexus with the original certificates issued by them and therefore they cannot be held as having been issued in lieu of the original certificates. Therefore, the Commissioner (Appeals) was wrong in accepting such fresh certificates and allowing the appeal of the assessee. The second contention of the department is that the quantities mentioned in the first set of certificates issued by the District Collector and second set of certificates issued by him are different and therefore there is no correlation between the first set of certificates and second set of certificates.

4. Ld. Counsel for the respondent explains that the project requires pipes but the exact quantity required will not be known until its execution is complete. In some cases more pipes than anticipated are required and in some cases, less pipes are required. The first set of certificates were issued by the District



Collector based on their submission of estimated quantity of pipes required. By the time the second set of certificates were issued, the projects were executed to a large extent and they were able to indicate the actual quantity of pipes used to that extent. Accordingly, the revised certificates reflected more accurately the quantity of pipes. Hence there was a difference between the two set of certificates. On the question of nexus between the old and new certificates, he would submit that the notification nowhere requires that any new certificate which is issued must be only in lieu of the earlier certificate. Further, the earlier certificates have already been cancelled by the District Collector at the instance of the Central Excise and are therefore *non est*. They are not relying on the first set of certificates any longer. They are relying on the second set of certificates according to which they are legitimately entitled to the benefit of the Notification No. 03/2004-CE, dated 08.01.2004 and this was correctly granted by the first appellate authority. He would further submit that even the second set of certificates did not cover their full quantity of pipes used and some quantity was not covered and exemption to such quantity of pipes was disallowed by the first appellate authority in the impugned order. They have accepted this disallowance and thereafter revised their refund claim. They could have approached the District Collector for a further revision to cover the quantity which was disallowed but have not done so. Therefore, there is no mistake in the Order-in-Appeal No. 9/2011, dated 06.04.2011 which has been challenged by the Revenue in appeal No. E/1798/2011

5. After considering both sides, we find no force in the argument of the Department that the second set of certificates must have been issued in lieu of the first set of certificates only and that the quantities cannot be revised in the second set of certificates based on the more accurate information available. We find nothing in the notification which require nexus between the new certificate with the cancelled certificates. We also find that Ld. Counsel for the respondent has explained satisfactorily the reasons for the difference in quantities between the two sets of certificates. We therefore find that this appeal by the Revenue deserves to be rejected and we do so.

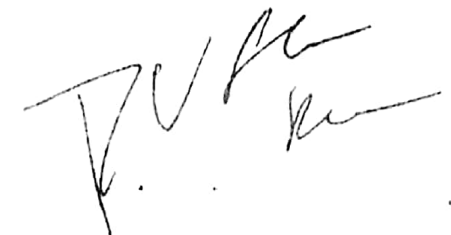
6. The second appeal is against the Order-in-Appeal No. 5/2012, dated 13.02.2012 passed by the Commissioner (Appeals) setting aside the Order-in-



Original No.44/2011 passed by the Asst. Commissioner. The Asst. Commissioner had rejected an amount of Rs. 57,03,614/- on the ground that these pipes were used for carrying treated water from the plant to the units is not covered by the Notification No. 03/2004-CE, dated 08.01.2004. He also held that the appellant is not the manufacturer of the pipes but they had procured it from the manufacturer. If the appellant's pipes become exempted, the manufacturer could not have availed CENVAT Credit under CCR 2004 or should have reversed the amount under Rule 6 of CCR 2004 and sought to recover the same from the respondent assessee. Both these contentions were rejected by the first appellate authority. Revenue supports the contentions of the original authority.

7. After examining the matter and the notification No. 03/2004-CE, dated 08.01.2004, we find that notification exempted pipes needed for delivery of water from its source to the plant and from there to the storage facility. In this case the pipes were being supplied for transporting effluent to treatment plants and treated water from the plant to the industrial units. The Revenue wants to deny exemption to the pipes which were used for transmission of water from the treatment plant to the industrial units. This denial is clearly not covered by the notification which exempts both pipes needed for delivery of water from its source to the plant as well as from there to the storage facility. The Revenue has not made out a case that storage facility is located in the plant only and not in the units which received the water. Further, even if there is storage facility with multiple storage points, it is now well settled that the ^{exemption}~~exemption~~ is not confined up to the first storage point only as the notification does not stipulate so. We, therefore, find no force in the argument of the Revenue on this account. UP

8. As far as the adjustment of Rs.68,72,164/- towards liability of the manufacturer under Rule 6 of CCR 2004 is concerned, we find that the Assistant Commissioner's attempt to pin the alleged liability of the manufacturer under CCR 2004 on the respondent, who is claiming refund is preposterous. It is not clear under what authority of law he sought to recover the CENVAT credit due from the manufacturer, from the buyer. We also find that this was beyond the scope of the show cause notice and is completely untenable. The first appellate



authority was correct in setting aside such recovery and allowing the appeal of the respondent herein. In view of the above, we find that Revenue's appeal No. E/1173/2012 is also liable to be rejected and we do so.

9. Accordingly, both the appeals filed by the Revenue are rejected and the impugned orders upheld.

(Operative portion of the order pronounced in open court on conclusion of hearing)

-sd-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

-sd-

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Vrg

प्रमाणित प्रति / CERTIFIED COPY

सहायक पंजीकार / Asst. Registrar
सीमाशुल्क, उत्पादशुल्क और सेवा कर वार्डन अधिकरण
Customs Excise And Service Tax Appellate Tribunal
हैदराबाद / Hyderabad