

Central Excise: Anchor rings and load spreading plates are part of windmill: CESTAT

This case has had a long and a tiresome journey.

Against an O-in-O passed by CCE, Pune-I confirming a CE duty of Rs.5.36crores by holding that Anchor rings and load spreading plates are not parts of wind-operated electricity generator (WOEG) & denying the benefit of Notification 6/2006-CE, the assessee Rakhoh Enterprises had filed an appeal before the CESTAT.

The Tribunal had by its order dated 17.12.2013 ordered pre-deposit of 25% of the duty demanded. See - 2013-TIOL-2032-CESTAT-MUM.

In appeal against this order, the Bombay High Court held that there was no case for interference and while giving more time to make pre-deposit directed the Tribunal to decide the appeal expeditiously upon payment of pre-deposit by the appellant. See this order dated 25.02.2014 - 2014-TIOL-288-HC-MUM-CX.

Incidentally, two other appeals filed by Gemini Instratech (involving similar claim of exemption in respect of Tower Doors & CE duty involved of Rs.1.03crores) in the year 2009 & 2010 were heard by the CESTAT along with the appeal filed by the assessee in question, on 13.08.2014.

The Division Bench of the CESTAT in its order dated 25.09.2014 held thus -

CX - Notfn. 6/2006-CE, 12/2012-CE - Anchor rings and Load Spreading Plates are used in the foundation of wind mill tower and cannot be considered to be part of Wind Operated Electricity Generators - benefit of exemption not available - appeal rejected of Rakhoh Enterprises; however in r/o Tower doors since contrary view taken in respect of same appellant Gemini Instratech - 2013-TIOL-738-CESTAT-MUM, matter referred to Larger Bench: CESTAT

We reported this order as - 2014-TIOL-2110-CESTAT-MUM.

A corrigendum dated 22.12.2014 was also issued in this regard. See - 2015-TIOL-137-CESTAT-MUM.

Against the order dated 25.09.2014, a ROM application was filed by Rakhoh Enterprises and while dismissing the application on 01.05.2015, the Bench held - 2015-TIOL-942-CESTAT-MUM -

CX - Duty demand along with interest upheld, however, penalty set aside - Appellant submitting that sine qua non for invoking extended period & imposing penalty u/s 11AC is one & the same, hence there is an error apparent on record. Held - as order was passed after considering all material facts and judgements, no patent mistake exists - ROM dismissed: CESTAT

A Writ Petition came to be filed against this order.

The High Court while quashing the Tribunal order observed -

"If all three Appeals involve similar question and issue, then, it is not clarified as to what distinguishes only the present Petitioner's case from the other two Appeals...The Petitioner's case also requires interpretation of the same Notification and its construction is also an issue in the Petitioner's case. Therefore the Tribunal should have formulated the same question even in the case of the Petitioner's Appeal and referred all three matters to be decided and by a larger Bench...This mistake and which was apparent could have been rectified in the rectification proceedings, but the Tribunal failed to exercise its powers and the jurisdiction vested in it by law."

The High Court order dated 31/08/2015 was reported as - 2015-TIOL-2086-HC-MUM-CX.

Accordingly, the Larger Bench heard the matters of Rakhoh Enterprises & Gemini Instratech Pvt. Ltd. recently.

The appellant Gemini Instratech Pvt. Ltd. submitted that the matter "Whether Windmill doors are entitled for the exemption notification 6/2006-CE" has been answered in their favour by the Supreme Court 2015-TIOL-322-SC-CX by treating Windmill doors/Tower doors as part of Wind Operated Electricity Generator. Furthermore, the CBEC vide Circular No. 1008/5/2015 CX dated 20/10/15 has, while inviting attention to the aforesaid judgment of the Supreme Court mentioned that in view of the same and clarification received from the administrative ministry, Towers, Nacelle, Rotor, Wind Turbine Controller etc. may be treated as parts and components of Wind Operated Electricity Generators & are eligible for exemption.

The Larger Bench extracted the findings of the Supreme Court and observed that in view of the same, Windmill doors are entitled to exemption Notification No. 6/2006-CE dated 01/03/2006, as parts of windmills.

On behalf of Rakhoh Enterprises, it was submitted that the anchor rings and load spreading plates are parts of the WOEG; that the said items are specially designed to be placed in the foundation of WOEG; that the structure can be over 100 meters and is subjected to much pressure of wind and, therefore, is subjected to horizontal movement; that the anchor ring and load spreading plates are specially designed in such a manner that they fit in the tower through numerous bolts which keep the tower tightly fixed to the ground. Photographs of the load spreading plates and anchor rings before and after erection of Wind operated electricity generator were also produced before the Bench.

The AR argued that the anchor rings and load spreading plates are not parts of the tower but are parts of the foundation of the tower and the Board Circular (supra) does not cover the same.

The Larger Bench observed -

"5.3 ...We find that the anchor rings consists of large rings with long bolts attached to this at the circumvent. The load spreading plates is also a ring with matching holes to accommodate anchor bolts fixing to the anchor rings. The load spreading plates and the anchor rings can be joined together into one item by fixing the anchor bolts at the matching holes of the load spreading plates. When assembled it would form in the shape of a cylindrical cage. The tower has holes at its base matching with the bolts of the anchor rings and the load spreading plates and together they can be joined by bolts. However, the assembly of anchor rings and the load spreading plates is first fixed together and made a part of the foundation by using reinforced cement concrete. Thereafter the tower is attached to the bolts of the anchor rings and load spreading plates assembly. A picture of the said arrangement of the anchor rings, load spreading plates and the tower base given by the appellant is reproduced below:

5.4 We find that the anchor rings and the load spreading plates are specifically designed for the purpose of attaching the tower to the ground by providing necessary bolts for the same. The anchor rings and the load spreading plates are an extension of the tower, though the same is fixed to the foundation first and later attached to the tower. Thus they are parts of the tower."

Inasmuch as the Larger Bench held that the anchor rings and load spreading plates are parts of tower specially designed for wind operated electricity generators and are eligible for exemption under Notification No. 6/2006 dated 01/03/2006.

The appeals were remitted back to the referral Bench for passing appropriate orders.