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

REGIONAL BENCH- COURT NO.3

Customs Appeal No.301 of 2011

(Arising out of OIA-31/COMMR-A-/JMN/2011 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

M/s. Cgg Veritas Services Pvt Ltd **........Appellant**
B-504, Delphi Building,
Orchard Avenue Road, Hiranandani Business Park,
Mumbai, Maharashtra-400076.

VERSUS

C.C.-Jamnagar(prev) **........Respondent**
Sharda House...Bedi Bandar Road,
Opp. Panchavati, Jamnagar, Gujarat

WITH

1. **Customs Appeal No. 302 of 2011 (Cgg Veritas Services Pvt Ltd)**
2. **Customs Appeal No. 397 of 2011 (Western Geco International Limited)**
3. **Customs Appeal No. 398 of 2011 (Western Geco International Limited)**
4. **Customs Appeal No. 35 of 2012 (Western Geco International Limited)**
5. **Customs Appeal No. 115 of 2012 (Viking Maritime Inc)**

(Arising out of OIA-32/COMMR-A-/JMN/2011 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

(Arising out of OIA-33/COMMR-A-/JMN/2011 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

(Arising out of OIA-34/COMMR-A-/JMN/2011 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

(Arising out of OIA-151/COMMR-A-/JMN/2011 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

(Arising out of OIA-149/COMMR-A-/JMN/2011 passed by Commissioner of CUSTOMS-JAMNAGAR (PREV))

APPEARANCE:
Sh. Manish Jain, Advocate for the Appellant
Sh. S.N. Gohil, Authorised representative for the Respondent

CORAM: **HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR**
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No.__A/ 11859-11864 /2019

DATE OF HEARING: 25.09.2019
DATE OF DECISION:25.09.2019

RAMESH NAIR

The issue involved is that whether the appellant is required to pay Additional Duty of Customs under Section 116 of Finance Act, 1999.

2. Sh. Manish Jain, Ld. Counsel appearing on behalf of the appellant submits that the identical issue has been considered by this Tribunal in the Case of M/s. Atlantic Shipping Pvt. Ltd Vs. CC., Jamnager-2018 (9) TMI 458-CESTAT wherein it was held that the Additional Duty of Customs @ Rs. 2 per litre on HSD covered under Sub Section (1) of the Section 116 of the Finance Act, 1999.

3. Sh. S.N. Gohil, Ld. Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. Heard both the sides and perused the records. Very identical issue has been considered by this Tribunal in the case of M/s Atlantic Shipping Pvt Ltd wherein the following order was passed.

> *4. We have gone through rival submission, we find that Section 116 of Finance Act reads as follows:*
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> > ***"Additional duty of customs (high speed diesel oil).***
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> > *116. (1) In the case of goods specified in the Second Schedule, being goods imported into India, there shall be levied and collected as an additional duty of customs an amount calculated at the rate set forth in the said Schedule.*
> >
> > *(2) The additional duty of customs referred to in Sub-section (7), shall be in additional to any other duties of Customs chargeable on such goods under the Customs Act, or any other law for the time being in force.*
> >
> > *(3) The provisions of the Customs Act, and the rules and regulations made there under, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of customs leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of Customs on such goods under Act or those rules and regulations, as the case may be*
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> *Sub Section (3) thereof extents the benefit of Exemptions under Customs Act also to the additional duty of customs levied under the Section 116 of Finance Act, 1999. Ld. Counsel relied on the decision of Tribunal in the case of Toyota Kirloskar Motor P. Ltd (Supra). In the said case while interpreting provision similar to Sub Section (3) of Section 116 of Finance Act, 1999, in respect of levy of National Calamity Contingent duty levied under Section 129 of the finance Act 2001, the Tribunal observed as follows:*

"4. Heard both sides. The National Calamity Contingent Duty was introduced in the budget of 2001 by virtue of Section 129 of the Finance Act, 2001. Section 129 is reproduced herein below:

(1) "In the case of goods specified in the Seventh Schedule, being goods manufactured or produced, there shall be levied and collected for the purposes of the Union, by surcharge, a duty of excise, to be called the National Calamity Contingent Duty (hereinafter referred to as the National Calamity duty), at the rates specified in the said Schedule.

(2) The National Calamity duty chargeable on the goods specified in the Seventh Schedule shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act, 1944 or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall as far as may be, apply in relation to the levy and collection of the National Calamity duty leviable under this section in respect of the goods specified in the Seventh Schedule as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those Rules, as the case may be.

" A close reading of the above reveals that NCCD is indeed a duty of excise. Further it is seen that the provisions of Central Excise Act, 1944 especially with regard to exemptions from duties would be applicable to NCCD leviable under Section 129. The CBEC has issued a Circular 60/01/06-CX dated 13-1-2006 with regard to export of goods and has clarified that none of the duties chargeable under any Act of Parliament which provides that in relation to levy and collection of such duty, the provisions of Central Excise Act and the rules made thereunder shall as far as may be apply; was/is payable on export of goods under bond. Such duties, inter alia include the following:-

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The National Calamity Contingent duty leviable under Section 136 of the Finance Act, 2001 (14 of 2001), as amended by Section 169 of the Finance Act, 2003 (32 of 2003) which was amended by Section 3 of the Finance Act, 2004 (13 of 2004).

From the Section 129 of the Finance Act, 2001 and also from the above Circular issued by the CBEC, it is very clear that Exemption Notification 108/1995 is applicable also to NCCD. The learned Advocate further brought to our notice the decision of this Tribunal in the case of Gokak Mills v. CCE, Bangalore - 2001 (129) E.L.T. 523 (Tri -Bang), wherein it was held while interpreting Notification No 214/86, Central Excise that the said notification issued under Rule 8(1) of Central Excise Rules exempts only basic excise duty and does not cover additional duty of excise leviable under Additional Duties of Excise (Goods of Special Importance) Act, 1957. The above was challenged in the Apex Court and the Apex Court allowed the appeal reversing the Tribunal's decision [2002 (146) E.L.T. A309 (S.C.)].

In these circumstances, the impugned order cannot be sustained. Hence, we allow the appeal with consequential relief.

Drawing the ratio of said decision, we find that so long as the exemption Notification 94/96-Customs is extended to the goods, the benefit of *exemption has to be allowed in respect of additional duty of customs levied under sub Section (1) of Section 116 of Finance Act, 1999.*

5. Ld. AR relied on the decision of Tribunal in case of Essar Oil (Supra). It is seen that the said decision was passed in the circumstance when provision of Sub Section (3) of Section 116 was not brought to the notice of the Tribunal, thus, the said decision is of not avail to the Revenue. Ld. AR also relied on the decision of Tribunal in the case of S.J.L.T. Textile Pvt. Ltd (Supra). It is seen that the said decision was passed ex-party, without any representation from the appellant. Ld. AR relied on the instruction F. No. 305/148/2004-FTT dated 11.10.2004, which contains direction contrary to the ratio of decision in the case of Toyota Kirloskar Motor P. Ltd (Supra). It is seen that this is a mere direction without any justification, therefore, no comment are warranted on the same.

6. In view of above, it is held that the benefit of Exemption from additional duty of customs levied under Sub Section (1) of section 116 of Finance Act, 1999 has to be extended to the goods which are entitled to exemption under Notification 94/96-Customs. All the appeals are allowed in above terms.

6. In view of the above decision of this Tribunal being the identical issue involved the Additional Duty of Customs in the appellant’s case is exempted in terms of the Sub Section (1) of the Section 116 of the Finance Act, 1999.

7. Accordingly, the impugned orders are set aside and appeals are allowed.

(Dictated & Pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi