

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD**

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 12726 of 2018-DB

[Arising out of Order-in-Original/Appeal No KDL-CUSTM-000-APP-018-18-19 dated 23.07.2018 passed by Commissioner of CUSTOMS-AHMEDABAD]

LARSEN AND TOUBRO LIMITED

...Appellant

Mff, Epc Block, Hazira,
Surat
Gujarat

VERSUS

C.C.-KANDLA

...Respondent

Custom House,
Near Balaji Temple,
Kandla
Gujarat

APPEARANCE:

Shri T. Vishwanathan, Shri Manish Jain, Ms. Shruti Khanna, Advocates for the Appellant

Shri. Anoop Kumar Mudvel, Superintendent (Authorized Representative) for the Respondent

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

FINAL ORDER NO. 12708/2023

DATE OF HEARING: 29.11.2023
DATE OF DECISION: 05.12.2023

RAJU

This appeal has been filed by M/s. L & T Ltd., against demand of Customs duty, interest and imposition of penalty.

2. Learned Counsel pointed out that they are engaged in providing Integrated Engineering & Construction Solutions to offshore and onshore hydrocarbon projects. He pointed out that they had entered into a contract with M/s. Oil and Natural Gas Corporation Limited (ONGC) for construction of

two well-head platforms and sub-sea pipeline at Bassein Oil Field. For the purpose of laying sub-sea pipeline, the appellant had imported Carbon Steel Seamless Pipes in terms of Notification No. 21/2015-Cus dated 01.04.2015. The said goods were dispatched from M/s. Jindal Saw Limited, Mundra, who carried out concrete coating process on the imported pipes. The said concrete coated pipes were thereafter sent to site of ONGC for completion of pipe laying by the appellant. After completion of the laying of the pipes, 190 concrete coated pipes were leftover. Learned Counsel pointed out that the said pipes were sold to M/s. Bombay Marine Enterprises. Learned Counsel pointed out that the SCN was issued alleging that they had violated 'Condition X' of Notification No. 21/2015-Cus dated 01.04.2015.

2.1 Learned Counsel argued that the impugned order failed to differentiate between the goods namely Seamless Pipes imported under the Notification No. 21/2015-Cus, and the goods, concrete coated pipes, manufactured out of the imported goods. He argued that the goods lying unused are not imported goods. He argued that the imported goods namely Seamless Pipes, were not diverted and therefore there was no violation of Condition X mentioned in the Notification 21/2015-Cus dated 01.04.2015. He relied upon para 4.16 of the Foreign Trade Policy 2015-20 to assert that the goods manufactured out of imported goods could be transferred after completion of export obligation. He relied on the decision in the case of M/s. PCL Oil & Solvent Ltd- 2020 (374) ELT 110 (Tri-Ahmd), wherein, under similar circumstances relief was granted.

3. Learned AR relied on the impugned order.

4. We have considered the rival submissions, we find that the revenue has relied on Condition X of the Notification No. 21/2015-Cus dated 01.04.2015. The said condition reads as under:

"The said authorization shall not be transferred, and the said materials shall not be transferred and sold; provided that the said materials may be transferred to a job worker for processing subject to complying with the conditions specified in the relevant Central Excise notifications permitting transfer of materials for job work."

The Condition 'X' would apply to goods imported under Notification 21/2015 namely seamless pipes. The said condition does not apply to Concrete Coated Pipes manufactured out of imported seamless pipes.

4.1 The appellants are relying on the para 4.16 of the Foreign Trade Policy, which reads as under:

"Advance Authorisation and/or material imported under Advance Authorisation shall be subject to 'Actual User' condition. The same shall not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose of product manufactured out of duty free input once export obligation is completed."

4.2 The entire disputes relate to taxability of the processed goods leftover after completion of the export obligation. It is seen that in the case of PCL Oil & Solvents Ltd (Supra) in identical circumstances following has been observed:

"2. *Learned Counsel for the appellant pointed out that they are manufacturing goods availing benefit of imports duty free advance authorization. He pointed out that as per duty free advance authorization the appellant are allowed to import certain quantity of goods subject to value limits, for export of finished goods. The quantity of goods importable by them is determined by Standard Input Output Norms (SION). As a result, while they were permitted to import certain quantity against advance authorization duty free, they actually needed the lesser quantity to manufacture the goods required to be exported. Learned Counsel pointed out that Revenue is seeking to demand duty on account of their efficient manufacturing process. Learned Counsel pointed out that the Revenue has primarily relied on Para 4.28(f)(v) of Handbook of Procedure, 2004-09. The said paragraph reads as under:-*

"4.28(f) RA shall compare relevant portion of Appendix 23 duly verified and certified by Chartered Accountant with that of norms allowed in Authorisation(s) and actual quantity imported against Authorisation(s) in the beginning of licensing year for all such Authorisations redeemed in preceding licensing year. In this verification process, in case it is found that Authorisation holder has consumed lesser quantity of inputs than imported, authorisation holder shall be liable to pay customs duty on unutilized value of imported material along with interest thereon as notified, or effect additional export within the EO period. However, for the customs duty component, the authorization holder has the option to furnish valid duty credit scrips issued under Chapter 3 of FTP and DEPB."

5. In terms of aforesaid paragraph, Revenue is seeking demand duty on the quantity of material imported by them and not used by them in manufacturing goods for entire export obligation in terms of advance authorization. Learned Counsel argued that the said paragraph applied only to "unutilized value of imported material". He argued that there was no unutilized material left as they had utilized the entire material for manufacture of finished goods and cleared the said finished goods in the domestic market. He argued that policy permits the clearances of finished goods manufactured out of such imported raw materials to domestic market, in terms of Para 4.1.5 of Foreign Trade Policy (FTP). He submits that in case there is any inconsistency between the provisions of FTP and HBP, then FTP provisions will prevail over HBP. He relied on the following decision to assert that Handbook of Procedure and Foreign Trade Policy should be read harmoniously :-

(a) Sri Venkataraman Devaru & Ors v. State of Mysore & Ors. - AIR 1958 SC 255

(b) Krishan Kumar v. State of Rajasthan & Ors. - AIR 1992 SC 1789

(c) Sultana Begum v. Prem Chand Jain - AIR 1997 SC 1006

(d) Sarla Performance Fibers Limited v. Commissioner of Central Excise - [2010 \(253\) E.L.T. 203](#) (Tri. - Ahmd.)

(e) BRG Iron and Steel Company Pvt. Limited v. UOI - [2014 \(309\) E.L.T. 393](#) (Del.)

(f) Narendra Udeshi v. UOI - [2003 \(156\) E.L.T. 819](#) (Bom.)

3. Learned Counsel further argued that no condition of Notification Nos. 93/2004-Cus. and 96/2009-Cus. has been violated and therefore, no demand of Customs duty can be imposed. Learned Counsel also argued that there was no

misdeclaration, therefore, extended period of limitation cannot be invoked. He relied on the decision of Hon'ble Gujarat High Court in Tax Appeal No. 271 of 2009. He argued that in such cases, even if there is any misdeclaration before DGFT, the Customs cannot invoke extended period of limitation on that ground as there is no misdeclaration before the Customs authorities.

4. *Learned Authorised Representative relies on the impugned order. He argued that the imports were made after exports and therefore, appellant was aware of the actual consumption of the raw material. He relied on the decision in the case KDL Biotech Limited v. CC (Export Promotion), Mumbai - [2015 \(327\) E.L.T. 305](#) (Tri. - Mumbai) to argue that in identical circumstances, the demand was upheld.*

5. *We have gone through the rival submissions. We find that the entire case of Revenue is based on Para 4.28(f) of Handbook of Procedure, 2004-09. It is seen that Para 4.28(v) reads as under :-*

4.28 Regularisation of Bona fide Default.

Cases of bona fide default in fulfillment of EO may be regularised by RA as under :

(i) to (iv)

(v) RA shall compare relevant portion of Appendix-23 duly verified and certified by Chartered Accountant with that of norms allowed in Authorisation(s) and actual quantity imported against Authorisation(s) in the beginning of licensing year for all such Authorisations redeemed in preceding licensing year. In this verification process, in case it is found that Authorisation holder has consumed lesser quantity of inputs than imported, Authorisation holder shall be liable to pay customs duty on unutilized value of imported material, along with interest thereon as notified, or effect additional export within the EO period. However, for the customs duty component, the authorisation holder has the option to furnish valid duty credit scrips issued under Chapter 3 of FTP and DEPB.

6. *It can be seen that Para 4.28 relates to regularization of bona fide default by exporters. The said provision is applicable only in cases of regularization of default and it cannot be applied straightaway to normal imports where export obligations have been fulfilled like in the instant case. Thus, it cannot be said that the provisions of Para 4.28 of HBP are applicable to all advance authorization. It is seen that the entire*

foundation of the Revenue's case is based on Para 4.28(v) of HBP 2004-09 and Revenue is seeking apply the said provisions to the case where there is no default. Therefore, we do not find any force in this argument of the Revenue.

6. *Moreover, we find that the policy prescribed in Para 4.1.5, it is seen that it permits use of left-over material for manufacture goods and clear the same in Domestic Tariff Area. Para 4.1.5 of FTP 2004-09 reads as under :-*

"4.1.5. Advance Authorisation and/or materials imported thereunder will be with actual user condition. It will not be transferable even after completion of export obligation. However, Authorisation holder will have option to dispose off product manufactured out of duty free inputs once export obligation is completed."

7. *We also find that Revenue has not pointed out provision of the notification that has been violated by the appellant. The Revenue has relied on the decision in the case of KDL Biotech Limited (supra) wherein in Para 27, the following has been held :-*

"27. We have considered the submissions. There is no dispute that the raw material imported was far in excess of that required by the appellant. This fact was not brought to the notice of the licensing authorities so that they could have issued the licence as per the actual requirement. Even after duty free importation, the appellants have neither made additional exports, nor paid the Customs Duty. These details were suppressed and came to light during investigation. Accordingly, we hold that there is a violation of the provisions of Handbook read with Foreign Trade Policy and since the exemption is granted to raw materials imported against Advance Authorisation issued in terms of Foreign Trade Policy, the exemption is subject to limitation as provided in the Notification, Foreign Trade Policy/Handbook of Procedures. We are not impressed with the argument of the Learned Counsel for the appellants that the said provision tries to restrict the provisions of the Foreign Trade Policy. In our view, it only clarifies the position relating to SION. It is not practically possible to precisely point out the exact input-output required which would be applicable for all manufacturers. Moreover such norms are based upon the feed back from the Trade Association which would normally be in the worst scenario. Foreign Trade Policy does not state that licence holder can use the surplus raw material imported duty free for own use. On the contrary, Handbook clarifies that duty is to be paid or additional export obligation to be fulfilled. We also note that advance authorization are issued based upon ad

hoc Norms or self-declared norms in terms of Handbook only. When Handbook authorizes use of ad hoc norms or self-declared norms, we do not see any rationale in questioning that Handbook is trying to restrict the Policy. Example of All Industry Drawback Rate is not at all comparable to the SION. There is no correlation under the All Industry Drawback Rate with the actual consumption of material or the duty incident thereon. Rates are based on All India estimates (and not based upon actual export orders and manufacturing process). Advance Licence Scheme is altogether a different scheme. Here the basic idea is of permitting import of duty free raw materials actually required for the production of an export order and use the same for the said purpose.”

7. *It is seen that, in the said case also the Tribunal confirm Para 4.28(f) of HBP. It is seen that while doing so, Revenue has failed to notice Para 4.28 of HBP relates only to cases of bona fide default in fulfilling export obligation and it would naturally not apply to the cases where there is no default like in the instant case.”*

4.3 It is seen that the condition X of Notification No. 21/2015-Cus dated 01.04.2015, applies only to the goods imported under the duty exemption scheme, whereas the provision of para 4.16 of the Foreign Trade Policy 2015-20 covers the goods manufactured out of imported goods. It is seen that para 4.16 of foreign trade policy 2015-20 specifically designed to deal with the cases like the instant case.

5. In these circumstances relying on the decision in the case of PCL Oil & Solvent Ltd (supra), the appeal is allowed.

(Pronounced in the open Court on 05.12.2023)

**RAMESH NAIR
MEMBER (JUDICIAL)**

**(RAJU)
MEMBER (TECHNICAL)**