

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 10869 of 2015

(Arising out of OIA-MUN-CUSTM-000-APP-012-013-14-15 dated 25.11.2013 passed by
Commissioner of CUSTOMS-MUNDRA)

Swiber Off Shore Construction Ltd.

Office At Centrium, Unit No.3 And 4, 3 Rd Floor,
Phoenix Market City, Mall Kurla,
MUMBAI-MAHARASHTRA

.....Appellant

VERSUS

C.C. Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld., Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

WITH

Customs Appeal No. 10870 of 2015

(Arising out of OIA-MUN-CUSTM-000-APP-012-013-14-15 dated 25.11.2013 passed by
Commissioner of CUSTOMS-MUNDRA)

Alok Gupta

Director of Swiber Off Shore India Ltd.
Having its Office At Centrium, Unit No.3 And 4, 3 Rd Floor,
Phoenix Market City, Mall Kurla,
MUMBAI-MAHARASHTRA

.....Appellant

VERSUS

C.C. Mundra

Office of the Principal Commissionerate of Customs,
Port User Buld., Custom House Mundra, Mundra
Kutch, Gujarat-370421

.....Respondent

APPEARANCE

Mr. Hardik Modh and Amit Ladhha Advocates for the Appellant (Assessee)
Mr. G. Kirupanandan, Superintendent (Authorized Representative) for the Revenue

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

Final Order No. 10332-10333 /2022

DATE OF HEARING: 06.01.2022
DATE OF DECISION:12.04.2022

RAMESH NAIR

The present appeals have been filed by the Appellants against the
Order-in-Appeal No. MUN-CUSTM-000-APP-012-14-15 dated 25.11.2014

2. The brief fact of the case is that the appellant was awarded contract
for B-193, Sub-sea pipe Line & B-193, Process Platform Projects by ONGC
for which the appellant had imported various goods/ materials for use in
the said projects availing the benefit of concessional rate (NIL) duty under

Sr. No. 215 of Notification 21/2002-Cus dtd. 01.03.2002, under essentiality certificate issued by the Director General of Hydrocarbon, Ministry of Petroleum and Natural Gas with post import condition of use in the said project of ONGC. On intelligence that the above goods were kept on dumb barge namely Bhageeratha-V, which had taken berth at Kaula Bunder, Darukhana and the said goods were to be illegally diverted to the local market without paying the Custom duty, department initiated investigation into the matter and detained the goods. On request of Importer the goods were released provisionally. Investigation further revealed that no prior permission was obtained for loading the duty free goods on barge, only intimation was given on 20.07.2012 that also after loading the goods in the barge and after survey of goods was conducted on barge. The Investigation also revealed that after provisional release of the goods, part of the imported goods valued at Rs. 1,05,29,116/- involving duty amount of Rs. 28,38,183 were neither used in the B-193, Sub-sea Pipe Line & B-193 Process Platform project nor any sanction of proper officer of Customs for non-observance of the condition under which the goods had been exempted from payment of duty was sought by Appellant. The said exemption was available for the goods to be used in connection with the purposes of off-shore oil exploration or exploitation. After completion of the specified project of M/s ONGC, the surplus goods were neither re-exported back nor cleared on payment of duty by Appellant, nor any permission from the DGH for use of said surplus goods in other project were obtained. The officers recorded various statements of the appellant Company personels and others and after thorough investigation, a show cause notice dated 17-9-2013 was issued, proposing to deny the benefit of Notification No. 21/2002-Cus., dated 1-3-2002 (Sr. No. 215) in respect of the part material imported, demand of customs duty along with interest and to impose penalty and confiscation of the seized goods. By the order-in-original dtd. 12.02.2014, the Adjudicating authority denied the benefit of exemption notification and also confirmed the demand of duty along with interest and also imposed penalties. It has also confiscated the goods and imposed redemption fine and also appropriated the amount as deposited during investigation. In addition, he also imposed penalties on Shri Alok Gupta, Director of M/s Swiber Offshore (India) Pvt. Ltd. Aggrieved by the said order, appellants filed appeal before the Commissioner (A), and Commissioner (A) upheld the Order-in-Original and rejected the appeal filed by the appellants. Hence, the present appeal.

3. The learned Advocate on behalf of the Appellant submitted that the appellant had complied with all the conditions as stipulated in exemption notification, insofar as the goods were imported for use in connection with the ONGC Project. DGH authority issued a certificate that the goods are required for offshore exploration/exploitation activity of ONGC Project. It is further submitted that the exemption notification does not provide actual use/end use condition. The present case is covered by the decision of the Tribunal in the case of *Clough Engineering Ltd. v. Commissioner of Customs* - [2006 \(198\) E.L.T. 457](#) (Tri.), which is upheld by the Hon'ble Supreme Court as reported in [2006 \(202\) E.L.T. A59](#) (S.C.). The learned Advocate also relied upon the following decisions: -

(i) *Ramson Garments Finishing Equip. P. Ltd. v. CCE, Bangalore* - [2007 \(211\) E.L.T. 44](#) (Tri.-Bang.).

(ii) *CCE Chennai-I v. Q Max Test Equipment Pvt. Ltd.* - [2003 \(159\) E.L.T. 665](#) (Tri.-Che.).

(iii) *B.G. Exploration & Production (I) Ltd. Vs. C.C.(Import), Mumbai*

(iv) *UOI v. Inter Continental (India)* - [2008 \(226\) E.L.T. 16](#) (S.C.).

4. He also submits that in their own matter the tribunal decided the matter vide final order No. A/11324/2015 dtd. 15.09.2015 in their favour.

5. On the other hand, Ld. Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order and argued that the denial of exemption in the present case is of those goods which have not been used at B-19, Sub-Sea Pipe Line & B193, process platform projects of ONGC. It is on record that goods under dispute is surplus goods. There has been no permission from Mundra Customs or Directorate General of Hydrocarbons, Noida, to use the surplus quantity in another project. He also submits that in the instant case it has been admitted by the Appellant as well as other people in un retracted statement that the surplus cargo was/could not be used for the intended purpose, the surplus cargo was moved without the knowledge of ONGC, without any prior permission from any authority, thereby it seems that Appellant indulged in mischief, otherwise prohibited and was outside the preview of contract entered between the Appellant and ONGC. at B-193, Sub-Sea Pipe Line & B-193.

6. We have considered the submissions made by both the sides and perused the records. We find that in Appellant's own matter the Tribunal

vide final order No. A/11324/2015 dtd. 15.09.2015 passed the order as under:

11. *We find that on the identical issue, the Tribunal in the case of Clough Engineering Ltd. (supra) extended the benefit of Notification No. 21/2002-Cus. (supra) for Seamless C.S. Pipes for intended use in the project for petroleum/gas exploration. In that case, the appellant imported Seamless C.S. Pipes for execution of the project of petroleum/gas exploration. The appellant sold excess imported seamless pipes after the project was over. The Customs authorities confiscated the said pipes on the ground that the appellant violated the Condition No. 31 of Serial No. 216 of Notification No. 21/2002 (supra) which is in question. The Tribunal interpreted the expression "required for petroleum operation" and held that there is no end use condition in the notification and therefore, excess goods which were intended for use in the project has been sold after the project is over, cannot be said that there was violation of the conditions of the notification.*

12. *In the present case, the appellant cleared concrete coated carbon steel pipes by filing various Ex-Bond Bills of Entry for installation, inspection and testing of North Node and Monel on pipelines and fabrications of bends for MANHARD-II Project of ONGC. The imported goods were used for the project and thereafter, surplus pipes which were originally intended for use in the project found to be excess and therefore, the appellant rightly claimed the benefit of notification. The Adjudicating authority observed that the said decision is not applicable as the serial number and the conditions mentioned in the above decision are different from serial number and conditions mentioned, under which the appellant claimed the benefit of the notification. We find that the conditions mentioned in both serial numbers of the notification are identical. In the said case, the goods were required for petroleum operations, whereas, in the present case, the goods are required for offshore oil exploration and exploitation.*

13. *In the case of Clough Engineering Ltd. (supra), the Tribunal followed the earlier case of Q Max Test Equipment Pvt. Ltd. (supra).*

The relevant portion of the finding in the case of Clough Engineering Ltd. (supra) is reproduced below : -

7. In the case of Commissioner of Central Excise, Chennai v. Q Max Test Equipment Pvt. Ltd. [[2003 \(159\) E.L.T. 665 \(Tri.-Chennai\)](#)] the Tribunal has held in the context of Notification No. 56/88 granting exemption to goods required for use of testing of LSI/VLSI, etc. that

"On my careful consideration of the submissions, as well as the findings recorded by learned Commissioner, I am of the considered opinion that the finding recorded by the Commissioner (Appeals) is just, proper and legal and does not require any interference at our hands. There is no word "used for manufacture" in the exemption notification. On plain reading of the notification, the exemption is available to the item and it is required for manufacture of goods falling under chapter heading 85.42, namely, Electronic integrated circuits and Micro-assemblies. There is no indication in the notification for production of any end-use certificate. If the item is required for manufacture of goods falling under chapter heading 85.42, then the benefit is required to be extended. In this regard, the assessee's contention is that the item being LSI/VLSI tester, it is eligible for the benefit of the concession as the said item is required for the manufacture of goods falling under chapter heading 85.42. The term used in the notification is "required for manufacture". The simple interpretation that has to be imported to these words are as to whether they are necessary for the purpose of manufacture of goods falling under chapter heading 85.42. It is not for us to include other meanings than to give a simple meaning of its utility in the manufacture of goods falling under chapter heading 85.42. The importation of the term "used in the manufacture of goods" is not proper and to hold that it is required to go into the goods to be manufactured by the assessee himself or by the person who are using it. So long as it is shown by the expert opinion, as has been shown in the present case, that it is required for use for testing of LSI/VLSI circuit micro assemblies and printed circuit board, the benefit has to be extended. In the present case, M/s. Electronic Corporation of

India Ltd., a Govt. of India Enterprise has certified that the item is for testing of the said LSI/VLSI, etc. In view of absence of any end-use condition in the notification, the benefit cannot be denied. It cannot also be included that the goods are required and sold for the manufacture of items falling under chapter heading 85.42 and it is not necessarily required to go into the final product. A plain reading of the notification indicates that it is enough if it is required for the manufacture of goods falling under chapter heading 85.42. The benefit for the testing equipment which are utilized for testing equipment falling under chapter heading 85.42. Therefore the ruling of the Apex Court rendered in the case of Sha Harakchand Dharkaji v. CC, Madras (supra) clearly applies to the facts of the case and is not distinguishable. So also the judgment rendered in the case of Bermalt (India) Pvt. Ltd. v. GOI & Ors., reported in [1986 \(23\) E.L.T. 411 \(Del.\)](#) will also apply to the facts and circumstances of the case. It was also brought to our notice that in the present case, the Revenue did not obtain any end-use certificate. Neither there is any condition for production of end-use certificate in the notification. Therefore the key for understanding of this notification is to read the notification in simple terms and not to import any other meaning which is not intended in the notification. The notification exempts the goods specified in the table annexed to the notification falling within Chapter 84 or Chapter 85 or Chapter 90 of the First Schedule to the Customs Tariff Act, 1975 and are required for the manufacture of goods, falling under heading No. 85.42 of the said First Schedule. The certificate produced from M/s. Electronic Corporation of India Ltd. clearly indicates that the item is required for manufacture of goods in question which falls under chapter heading 85.42. In that view of the matter, the Commissioner's order granting benefit on the simple reading of the notification is justified and correct and there is no infirmity in the same. There is no merit in this appeal and it is rejected."

8. The above view recorded by Id. Member (Judicial), who disagreed with the order recorded by Id. Member (Technical)

that the benefit of the notification was not available to the respondents, has been concurred with by third member, and by majority order, the appeal of the Revenue was dismissed. The Tribunal held that the expression "for use" is on a higher footing than the expression "required for use, and in the absence of the expression "specifically used for manufacture", has extended the benefit of Notification No. 57/88 to LSI/VSLI tes. equipments falling under Chapter 85.42 and sold to customers other than manufacturers of goods falling under Customs Tariff Heading 85.42 and not actually used for manufacture of electronic Integrated Circuits and Micro assemblies falling under CTH 85.42.

9. In the light of the above decisions and in the light of the admitted position that the project was completed by the appellants which in turn confirms that the 400 MM dia Seamless C.S. Pipes were intended for use in the project we hold that the appellants are eligible to the benefit of Notification No. 21/2002 and hence confiscation, duty demand and penalty are not sustainable, and accordingly set aside the same.

14. *In the case of Ramsons Garments Finishing Equipments Pvt. Ltd. (supra), the appellant imported machinery and equipments and claimed the benefit of Notification No. 29/99-Cus., dated 28-2-1999, subject to the condition that the imported machinery and equipments were for use of textile industry. The appellant, out of the total imported machineries, a few of them sold to hospital/dry cleaners. The Adjudicating authority denied the benefit of the exemption notification on the ground that the imported machineries had not been used in the textile industry. The Tribunal after dealing with various decisions and conditions, held that in absence of condition of actual use in the notification, the benefit of notification cannot be denied merely the goods in dispute were used in hospital and not in the textile industry. Similarly, in the instant case, the appellant complied with all conditions mentioned in the notification at the time of clearance of the goods for ONGC Project. There is condition for requirement of end-use certificate in the notification. There is no dispute that the excess goods were intended for use in*

the project and therefore, the benefit of the said notification cannot be denied.

15. *In view of the above discussion, we find that the demand of duty along with interest and penalty and confiscation of the goods cannot be sustained. Accordingly, the impugned order is set aside. The appeal filed by the appellant is allowed.*

7. Against the said final order of tribunal the department has filed the Tax Appeal No. 1038 of 2017 before the Hon'ble Gujrat High Court and said appeal admitted by the Hon'ble High Court and pending for final decision.

8. No doubt that the tribunal can decide the present disputed question of facts as a final fact-finding authority. However, since the disputed matter in appellant's own case is pending before the Hon'ble Gujarat High Court, we are of the opinion that the matter needs to be re-considered on the basis of the outcome of the decision of Hon'ble Gujarat High Court in the above tax appeal.

9 As per our above observations, we set aside the impugned order and remand the matter to original adjudicating authority for passing a fresh order after the outcome of the decision of Hon'ble Gujarat High Court. The original adjudicating authority shall pass denovo adjudication order after granting reasonable opportunity of hearing to appellants.

10 The appeals are allowed by way of remand to the Adjudicating Authority.

(Pronounced in the open court on 12.04.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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