

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

REGIONAL BENCH- COURT NO.3

Customs Appeal No. 12293 of 2019

(Arising out of OIO-MUN-CUSTM-000-COM-04-19-20 dated 12/06/2019 passed by Commissioner of Central Excise, Customs and Service Tax-MUNDRA)

Sapura Offshore Sdn Bhd Limited

Unit No. 1211, First Floor, Solitaire Corporate Park,
Buildind No. 12, Chakala, Andheri East
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:

Shri. Jitendra Motwani, Advocate & Shri. Amit Laddha, Advocate for the Appellant
Shri R.K. Agarwal, Superintendent (AR) for the Respondent

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

Final Order No. 12462 /2024

DATE OF HEARING: 27.06.2024
DATE OF DECISION:22.10.2024

RAJU

This appeal has been filed by Sapura Offshore Sdn Bhd Limited against demand of Customs Duty.

2. Learned Counsel pointed out that the appellants are engaged in providing services to ONGC for offshore construction etc. In terms of Notification No. 12/2012-Cus, the appellant had imported certain pipes in terms of aforementioned notification, the quantity of pipes required for the operation was certified by the Directorate General of Hydro carbons in the

Ministry of Petroleum and Natural Gas, Government of India (DGHC). DGHC certified that the said pipes are required for the petroleum operations, exempted under the aforementioned notification. Some of the pipes were however left over, after completion of operation.

3. The imports were made by three Bill of Entries, one Bill of Entry dated 24.01.2017 and two Bill of Entries of March 2017. The Learned Counsel pointed out that so far as, the Bill of Entry dated 24.01.2017 is concerned, no duty can be demanded, as the issue is covered by various decisions namely:-

- State of Hariyan V.Dalmia Dadri Cement Ltd-2004 (178) ELT 13 (SC)
- Clough Engineering Ltd. V. Commissioner of Cus. (Import). Mumbai-2006 (198) ELT 457 (Tri.-Mumbai)
- Commissionerv. Clough Engineering Ltd.-2006 (202) (202) ELT A59 (SC)
- Swiber Construction Pvt. Ltd. V. Commissioner of Customs, Kandla-2015 (330) ELT 715 (Tri.-Ahmd)

3.1 As regards, the imports made by the appellant in March, 2017, the same are not covered by the aforesaid decision as the said notification No. 12/12-Customs was amended by the Notification No. 06/2017, Customs dated 02.02.2017 wherein, in the condition 40A appearing against relevant entry, following additional condition was introduced:-

"(iii) in Condition No. 40A, After Clause (d) the following clause shall be inserted namely:

"(e) Where the goods so imported are sought to be disposed of, the importer of the transferee, as the case may be, may pay the duty of customs which would have ben payable but for the exemption contained herein, on the depreciated value of such goods subject to the condition that the importer of the transferee, as the case may be, produces before the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction over the port of import, a certificate from a duly authorized officer of the directorate General of Hydor Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods are no longer required for the petroleum operations or coal bed methane operations, and the depreciated value of the goods shall be equal to the original value of the goods at the time of import reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of clearance of the goods namely :-

(i) for each quarter in the first year at the rate of 4 per cent:

- (ii) for each quarter in the second year at the rate of 3 per cent;
- (iii) for each quarter in the third year at the rate of 2.5 per cent; and
- (iv) for each quarter in the fourth year and subsequent years at the rate of 2 per cent., subject to the maximum of 70 per cent:”

4. Learned Counsel pointed out that the appellants would be entitled to claim the depreciation in terms of Clause (e) of Condition 40A of Notification No. 12/2012-Cus dated 17 March 2012.

5. Learned AR relies on the impugned order.

6. We are considered the rival submissions. Notification 12/2012 as it stood prior to 02 February, 2017 did not contain the Clause (e) in the Condition No. 40A. The law as it stood prior to 02 February, 2017 has been interpreted in various decisions cited by learned Counsel. In the case of *Clough Engineering Ltd. V. Commissioner of Cus. (Import), Mumbai-2006 (198) ELT 457 (Tri.-Mumbai)* following has been observed:-

"3. We have heard both sides and perused the records. The issue for determination is whether the goods imported in April and September, 2002 are eligible to the benefit of duty free import under Notification No. 21/2002.

4. According to the Notification, goods specified thereunder and falling under specified Chapter Headings of the CTA 1975 are exempt from payment of Customs duty and additional duty of customs subject to certain specified conditions. As per Serial No. 216 of the Table annexed to the notification goods falling under Chapter 84 or any other chapter specified in List 12, required in connection with Petroleum operations undertaken under specified contracts are exempt subject to condition 31 which inter alia provides for production of certificate from a duly authorized officer of the Directorate General of Hydro Carbon in the Ministry of Petroleum and Natural Gas Government of India that the imported goods are required for petroleum operations referred to in Clause (a) i.e. in connection with Petroleum operations to be undertaken under a contract with the Government, of India.

5. The entire dispute in this case revolves around the interpretation of the expression "required for petroleum operations". The stand of the Department is that since the seized goods were in excess of the quantity of pipes actually used in the Laxmi Field Project Phase I by the importers who had entered into a contract dated 29.6.2001 with M/s. Cairns Energy Pvt. Ltd. for execution of the above project by carrying out engineering, designing, procurement construction, fabrication and installation of two platforms, pipelines and onshore gas processing plant etc., they were not required for the project and hence the condition in

the notification had been violated by them. On the other hand, the importers contend that the goods were required for the project as certified by the Directorate General of Hydro Carbon who is the authority prescribed under the Notification for issue of certificate of requirement, and that there is no stipulation in condition 31 that imported goods have to be actually used in the said project; and therefore sale of seamless pipes is not contrary to the condition of the Notifications.

6. The submission of the importers that there is no end-use condition in the notification has force, in the light of the case law cited before us. In the case of *State of Haryana v. Dalmia Dadri Cement Ltd.* 2004 (178) E.L.T. 13 (S.C.), the Apex Court held that the expression "for use" occurring in Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, must mean "intended for use" and that, if the intention of the legislature was to limit the exemption from sales tax by deduction from 'taxable turnover', only to such goods sold "goods used". The court held that the mere fact that some of the cement supplied to the Punjab State Electricity Board on the basis of certificates issued by the Board to the effect that the cement was required for use in the generation or distribution of electrical energy, was used by the Board for activities not directly connected with activities not directly connected therewith, cannot make any difference regarding the availability of the exemption. The above decision has been followed by the Tribunal in *NOCIL v. Commissioner of Customs (Import), Mumbai* reported in 2000 (126) E.L.T. 1072 in interpreting Notification No. 158/76 which exempts raw naphtha intended for use in the manufacture of petrochemicals and extending the benefit there under to the quantity of raw naphtha which had evaporated and hence not consumed in the manufacture of petrochemicals.

7. In the case of *Commissioner of Central Excise Chennai v. Q Max Test Equipment Pvt. Ltd.* 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 and Ors.* 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 of 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."

6.1 The said decision was approved by the Hon'ble Apex Court in the case of Clough Engineering Ltd. Vs. Commissioner of Cus. (Import), Mumbai as reported in 2006 (202) ELT A59 (S.C). The aforementioned decisions were made in respect of Notification No. 21/2002-Cus which provided similar exemption as in case of 12/2012- Cus. The aforementioned decision is equally applicable to the facts of the case in respect of Notification No. 12/12-Customs as it stood prior to 02 February, 2017. In view of the above, the demand in respect of imports made vide Bill of Entry dated 24 January, 2017 is set aside.

7. It is seen that the Notification No. 12/2012-Cus., was amended and following Clause was introduced in Condition 40A

"(iii) in Condition No. 40A, After Clause (d) the following clause shall be inserted namely:

"(e) Where the goods so imported are sought to be disposed of, the importer of the transferee, as the case may be, may pay the duty of customs which would have been payable but for the exemption contained herein, on the depreciated value of such goods subject to the condition that the importer of the transferee, as the case may be, produces before the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction over the port of import, a certificate from a duly authorized officer of the Directorate General of Hydrocarbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods are no longer required for the petroleum operations or coal bed methane operations, and the depreciated value of the goods shall be equal to the original value of the goods at the time of import reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of clearance of the goods namely :-

- (i) for each quarter in the first year at the rate of 4 per cent;*
- (ii) for each quarter in the second year at the rate of 3 per cent;*
- (iii) for each quarter in the third year at the rate of 2.5 per cent; and*
- (iv) for each quarter in the fourth year and subsequent years at the rate of 2 per cent., subject to the maximum of 70 per cent."*

7.1 Consequently, it is seen that notification expressly denied exemption to the left over goods which though imported for the specified purpose could not be used for the said purpose. However, in the said circumstances, the notification it prescribed specific rate of depreciation for the purposes of calculations of Customs Duty. The impugned order holds that the depreciation

is available only up to the date of removal of the goods from offshore platform/MBPT. Whereas, the appellant seek depreciation up to the time when the goods were disposed of by them. We find that the Clause (e) prescribes the depreciation on a straight line method.

8. The impugned order relies on the decision of Tribunal in the case of Jagson International Ltd. Vs. Commissioner reported in 2018 (362) ELT A244 (Tri.-Ahm.) to deny the benefit. A perusal of the facts in the case of Jagson International Ltd shows that in the said case M/s. ONGC had awarded a letter of approval to M/s. Jagson International Ltd for petroleum Operation/Exploration as Oil Gas Licensee to ONGC. M/s. Jagson International Ltd was required mobilizes the rig 'Deepsea Treasure' within 180 days to commence petroleum operation/exploration. M/s Jacson International could not mobilized the rig within the stipulated time and even during the period when the extension was granted by ONGC. Consequently, the exemption at Sr.No. 356 of Notification No. 12/2012-Cus., (read with Condition No. 41) was sought to be denied by revenue. The facts in the instant case are that the appellant had imported certain goods, as certified by DGSC and had put most of the goods in use for the stated purpose. A part of the goods were leftovers. We find that the facts in the instant case are significantly different from the facts in the case of Jagson International Ltd where the importer had failed to fulfil the necessary conditions of place by ONGC. In view of the above, the reliance on the decision of Tribunal in the case of Jagson International Ltd(supra), in the impugned order is not correct.

9. We find that the decision in the case of Clough Engineering Ltd., approved by Hon'ble Apex Court, is more akin to the facts in the instant case in so far import made prior to 02.02.2017 are concerned. Therefore, relying on the decision of Tribunal in the case of Clough Engineering Ltd., the demand in respect of Bill of Entry dated 24.01.2017 is set aside.

10. After introduction of Clause (e) in Condition 40A by Notification No. 06/2017 dated 02 February 2017, the duty became payable on the leftover goods imported for the petroleum operations or for coal bed methane operations. However, the said notification also prescribed the rate of depreciation at which the goods will be valued. Condition 40A reads as follows:

"(iii) in Condition No. 40A, After Clause (d) the following clause shall be inserted namely:

"(e) Where the goods so imported are sought to be disposed of, the importer of the transferee, as the case may be, may pay the duty of customs which would have been payable but for the exemption contained herein, on the depreciated value of such goods subject to the condition that the importer of the transferee, as the case may be, produces before the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction over the port of import, a certificate from a duly authorized officer of the Directorate General of Hydrocarbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the said goods are no longer required for the petroleum operations or coal bed methane operations, and the depreciated value of the goods shall be equal to the original value of the goods at the time of import reduced by the percentage points calculated by straight line method as specified below for each quarter of a year or part thereof from the date of clearance of the goods namely :-

- (v) for each quarter in the first year at the rate of 4 per cent:*
- (vi) for each quarter in the second year at the rate of 3 per cent;*
- (vii) for each quarter in the third year at the rate of 2.5 per cent; and*
- (viii) for each quarter in the fourth year and subsequent years at the rate of 2 per cent., subject to the maximum of 70 per cent:"*

It is seen that in the first line of Clause (e), it is clearly stated that the said Clause will be activated only when the imported goods are sought to be disposed of. The said Clause also provides that the depreciation will be "from the date of clearance of goods". The impugned order fails to take notice of such clear direction and denies the benefit of depreciation. It is seen that disposal of goods does not mean removal from offshore to onshore. Disposal of goods means transferred or sale of goods to another entity. Therefore, the impugned order in so far as it denies the benefit of depreciation to imports made is set aside.

11. It is seen that in the instant case does not involve any violation of Section 111 of the Customs Act and the notification itself foresees the

possibility of leftovers and disposal thereof. In these circumstances, we do not find any reason for confiscation of goods or imposition of penalties on anyone.

12. In view of the above, the impugned order is set aside and the matter is remanded to the original adjudicating authority for fresh decision in terms of the observations made herein above.

(Pronounced in the open court on 22.10.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)