

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

REGIONAL BENCH- COURT NO. 3

Customs Appeal No. 10250 of 2021- DB

(Arising out of OIO-AHM-CUSTM-000-COM-012-20-21 dated 31.12.2020 passed by Principal Commissioner of Customs - Ahmedabad)

Larsen & Toubro Limited

MFF Hazira, Manufacturing Complex,
Hazira Road, Village Bhatha, Surat-394510

.....Appellant

VERSUS

C.C. – Ahmedabad

Custom House, Near All India Radio,
Navrangpura, Ahmedabad-Gujarat

.....Respondent

APPEARANCE:

Shri T Vishwanathan, Ms. Srinidhi, Mr. Manish Jain, Advocates for the Appellant
Shri Ajay Jain, Special Counsel (AR) for the Respondent

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

FINAL ORDER NO. 13043 /2024

DATE OF HEARING: 24.10.2024
DATE OF DECISION: 05.12.2024

RAJU

This appeal has been filed by M/s Larsen & Toubro Hydro Carbon Engineering Ltd. (L&T) against demand of customs duty and imposition of penalties.

2 Learned Counsel for the appellant submits that the SCNs allege that the goods in question have been improperly removed from the private bonded warehouse and accordingly duty has been demanded under Section 72 read with Sections 73A and 28 of the Customs Act, 1962. Learned Counsel submits that the SCNs so issued by the customs authorities at the port of import are without jurisdiction as only the officers having territorial jurisdiction over the warehouse can demand duty in present case. The assessment of the warehoused goods takes place at the time of clearance from the warehouse, in terms of Section 15(1)(b). In support of this proposition the following cases are being relied upon.

- Ferro Alloys Corpn Lid vs. Collr. of Customs (Appeals), Bhubaneswar, 1995 (77) [E.L.T.](#) 310 (Tribunal - LB) (Refer to Sr No. 11 of the Compilation)
- Cosmo Ferrites Ltd. Versus Commissioner of Central Excise, Chandigarh. [2014 (8) [E.L.T.](#) 633 (Tri-Del.) (Refer to Sr No. 12 of the Compilation)

2.1 Learned Counsel for the appellant further submits Where the warehouse is situated in a place where there is no Customs Port or Custom Station or Commissionerate exists, then the Central Excise Officers act as customs officers too, deriving powers from the Customs Act, 1962. In this regard, Notifications mentioned at Sr No. 5 of the Compilation may be referred to. Thus, the Central Excise officers having jurisdiction over the warehouse are also Customs Officers, for administering the Customs Act. In the present case too, at every stage, even prior to receipt of the imported goods under the into-bond bill of entry, till the finished goods manufactured in bond, are supervised and approved by the Central Excise Officers, who acted as customs officers too. The Appellants submit that their activities and manner of functioning were always in the knowledge of the Excise / Customs Authorities concerned. This is evident from the following:

- i. Customs/Excise documents: Chain of documents evidencing import, warehousing and subsequent clearance of the goods. At each stage, the documents have been attested by Excise/Customs officers. This is the practice that has been followed for past 30 years.
- ii. Excise/Customs officers were posted at as well as regularly visited Appellants' premises and inspected the same. Thus, it was clearly visible that the manufacturing was taking place just outside the bonded warehouse.
- iii Audits were regularly conducted during the period concerned. During the audit Excise/Customs visited the Appellants' premises and thoroughly checked the manufacturing process as well as the documents

iv Vide their letter dated 6.11.2015 to Assistant Commissioner, Surat, the Appellants clearly mentioned that due to size restrictions the manufacturing operations are carried out outside the private bonded warehouse but within the factory registered under the Central Excise and hence requested for amendment of the licence granted under Section 58, to include the entire central excise factory as a private bonded warehouse. This was /is the practice followed for many years from 1986 and also after 2015. A formal amendment was granted on 1.9.2017.

(v) Vide their letter dt. 15.7.2017 to the Departmental Authorities, the Appellants had explained the nature of goods being manufactured by them at their manufacturing premises in Hazira for supply to ONGC. The Appellant's letter clearly captures that the manufacturing in question has been undertaken since 1986 in their Hazira plant for supply to ONGC. The nature/size of the products manufactured is such that the same cannot be manufactured within four walls, and accordingly, considering the peculiarity of the activity and the national importance of the same, Commissioner, Surat had granted permission to undertake the manufacture in the Excise Area. Commissioner, Surat had sought a clarification on the practice in 2015 and accordingly, the Assistant Commissioner, Surat had visited the Appellants' factory and submitted a detailed report to the Commissioner. Pursuant to the same, the Commissioner, Surat also highlighted the issue to the Chief Commissioner and sought clarification, and pending the clarification the Commissioner, Surat had given the Appellants a verbal assurance to maintain status qua until revert from the CBEC.

(vi) Appellants' vide application dt. 31.7.2017 wrote to the Commissioner, Surat, and explained about the manner of manufacturing in detail and again sought amendment of the private bonded warehouse license, to include the complete manufacturing premises.

2.2 The Appellants further submit that following inter-departmental Communications and reference to the Central Board of Excise and Customs/Central Board of Indirect Taxes and Customs, clearly show that since 1986 manufacturing activities were permitted to be carried out

within the Central Excise registered premises, with the knowledge and approval of the Central Excise /Customs officers concerned:

i. Letter of the Commissioner, Central Excise, Customs and Service Tax, Surat-II to Chief Commissioner of Central Excise, Customs and Service Tax, Vadodara dated 6.6.2017 mentions the following:

That since 1986 manufacturing in the premises has been taken place outside the warehousing premises. The same is with the knowledge and approval of Commissioner of Customs/Excise, Surat. That the nature of goods being manufactured is such that the manufacturing activity cannot be carried out within the warehouse as the warehouse premises is too small. That instead of mandating manufacturing to be carried out in warehouse, the Appellants be permitted to manufacture goods in accordance with the provisions of Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016. The letter suggested that the Chief Commissioner to write to the Board for suitable amendments/clarifications.

ii. Letter from office of Chief Commissioner, Central Excise, Customs and Service Tax, Surat to the CBEC dated 7.2.2017 stating the following:

- The Chief Commissioner forwarded to the Board copy of the Commissioner, Surat's letter dt. 6.6.2016 and requested the Board to make suitable amendments in Sl. No. 357 of Notification No. 12/2012-Cus to relax the requirement regarding manufacturing in bonded warehouse, and instead the Appellants may be permitted to undertake the manufacturing in the area outside the bonded warehouse, supported by Certificate issued by Chartered Engineer. Alternatively, the Appellants be permitted to undertake the manufacturing operations in compliance with Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2016 rather than in a warehouse.

Both the letters refer to the fact that for 35 years, the manufacturing operations were undertaken in the open yard outside the bonded warehouse but within the Central Excise factory, and this was in the knowledge of the excise/customs officials and the same were permitted without any objection from the inception. These officials who have written the above letters are officers of Customs as well as Central Excise. The Appellants submit that the Appellant's actions were not done surreptitiously but were done with the necessary approvals and knowledge of the officials, without any objection at any point of time. The Appellants submit that the manufacturing practice followed by the Appellants was as established procedure/practice followed for more than 3 decades. Courts have consistently held that such established practice must be given due consideration. Reliance for the same is placed on the following cases:

- Sedco Forex International Drilling Inc vs Commr of Cus., Mumbai [2001 (135) ELT 625 (Tri-Mumbai)]
- Maintained by the Hon'ble Supreme Court of India in Commissioner v. Sedco Forex International Drilling Inc. [2005 (179) ELT. A39 (SC)] (Refer to Sr No.18 of the Compilation).
- Commissioner of Customs, Kandia vs PSL Ltd [2015 (327) ELT 706 (Tri. Mumbai)] (Refer to Sr No. 19 of the Compilation).
- Hindalco Industries Ltd vs CC Ahmedabad [2024 (2) TMI 25] (Refer to Sr. No.20 of the Compilation).
- Aban Loyd Chiles Offshore Limited vs Commissioner of Customs [2006 (200) ELT 370 (SC)] (Refer to Sr No.21 of the Compilation).
- Ram Parvesh Singh & Ors vs State of Bihar & Ors [2006 (8) SCC 381] (Refer to Sr No.22 of the Compilation)

2.3 The Appellants submit that the license issued to the Appellant under Section 58 of the Customs Act, 1962 was amended on 1.9.2017 with corresponding amendment in the permission granted under Section 65 too, on 1.9.2017. These amendments were made to the licence and permission earlier granted on 28.5.2014. By this amendment, the request made on 6.11.2015 to include the complete manufacturing unit located at Hazira port was accepted and approved, in addition to the subsequent requests made in this regard. Post the amendment, without any change in the manner of functioning, the Appellants have been granted exemption. The Appellants submit that the amendment of the

license should be treated as having effect from the date of issuance of the original license ie. from 28.5.2014 or at least from 6.11.2015, when an amendment was sought by the Appellants. Reliance in this regard is placed on following case laws wherein the Courts have held that any amendment to the license will have retrospective effect i.e. will be effective from the date of issuance of the original license.

- Marico Ltd vs Commissioner of Cus. (Export) ACC, Mumbai (2019 (369) ELT 1175 (Tri-Mumbai)] (Refer to Sr No. 14 of the Compilation)
- Commissioner of Central Excise vs M.P.V & Engg. Industries [2003 (153) ELT 485 (SC)] (Refer to Sr No. 15 of the Compilation)
- Bhilwara Spinners Limited vs Union of India [2011 (267) ELT 49 (Bom)] (Refer to Sr No. 16 of the Compilation)
- Condor Footwear (1) Limited vs Commissioner of Customs. Ahmedabad [2019 (367) ELT 653 (Tri-Ahmd)] (Refer to Sr No. 17 of the Compilation)

The Appellants submit that the subsequent amendment of the license in 2017 should also be treated as post-facto approval of the procedure that has been followed since issuance of the warehousing license in 2014. Reliance for the same is placed on the case of LIC vs. Escorts Ltd. Reported in AIR 1986 SC 1370. This decision was also relied upon by the Tribunal in Hyundai Heavy Industries Co. Ltd.-2006 (205) ELT 841. affirmed by Bombay High Court in 2018 (361) ELT 837, and further affirmed by Supreme Court in 2018 (361) ELT A225.

2.4 The goods imported by the Appellant were used in manufacturing goods to be supplied to ONGC and others for offshore petroleum operations. The finished goods were supplied to ONGC against ICB contracts, for exclusive use in off-shore petroleum operations. Such finished goods cleared to ONGC were always against a certificate issued by the Director General of Hydrocarbon (DGH) certifying that the goods were indeed used for petroleum operations. The finished goods were also exported out of India, which were too used for offshore petroleum operations. Illustrative DGH Certificates and supporting documents and Completion Certificates of the ONGC projects towards which imported goods were consumed/utilized. These certificates demonstrate that the inputs in question were used in manufacture of goods which were

supplied to petroleum operations. The Appellants submit that once the goods have been supplied to ONGC projects, the end-use condition attached to Sl. No. 357 of Notification No. 12/2012-Cus has been fulfilled. These goods are also otherwise covered by list 13 attached to Sl. No. 356 of Notification No. 12/2012-Cus, exempting from payment of both BCD and CVD. The Appellants further submit that, once manufactured goods have been exported, the desired purpose has been achieved and duty ought not to be demanded.

2.5 The Impugned Order has denied the benefit of Notification No. 12/2012-Cus dated 17.03.2012 to the Appellant on the ground that the Appellant failed to follow the conditions scrupulously and accordingly placed reliance on the order in *CE v. Hari Chand Shri Gopal* [2010 (260) ELT. 3 (SC)]. The Appellants submit that this decision is not applicable to present case as the Department was all along well aware of the fact that the Appellants were carrying out the activity outside the Private Bonded Warehouse as the goods imported were bulky and oversized and manufacturing could not be undertaken in the bonded warehouse premises. Thus, as the activities were always undertaken with the knowledge and approval of the customs/excise authorities concerned, there is no violation of procedure at all that has taken place in present case. In fact, the procedure followed had acquired the nature of accepted/approved procedure for the activities concerned. It is not as if the appellants have not at all followed any procedure or manufactured the goods in accordance with Section 65. The fact of the matter is that the goods were duly received and used in the manufacture, under Bond, not only within the warehouse, but also outside the warehouse, but within the registered premises. The fact of the matter is the manufacture was undertaken with the permission of the central excise and custom authorities. Hence, the appellants have fulfilled the condition of the notification, in letter and spirit. The Appellants further submit that it is also beyond doubt in present case that the goods have indeed been used for the required purpose. The Courts have consistently distinguished applicability of *C.E. v. Hari Chand Shri Gopal* [2010 (260) EL.T. 3 (S.C.)] and held in the following cases that the decision will not be applicable in cases where the end use has been fulfilled and the procedures undertaken were with the approval of the concerned authorities:

Salora Components Pvt Ltd vs Commr of C.Ex& ST., Ahmedabad-III [2019 (370) ELT 925 (Tri-Ahd)). (Refer to Sr. No. 23 of the Compilation) Maintained by the Hon'ble Supreme Court in Commissioner v. Salora Components Pvt. Ltd. (2020 (371) ELT. 487 (SC)) (Refer to Sr No.23 of the Compilation). Auro Laboratories Ltd vs Commr of C.Ex., Madurai [2016 (344) ELT 391 (Tri-Chennai)). (Refer to Sr No.24 of the Compilation). Commissioner of Central Excise. Meerut-II vs JS Gupta & Sons (2012 (275) ELT 449 (Tri. Del)). Affirmed by the Hon'ble High Court of Allahabad in Commr of Cus. & C.Ex vs J.S. Gupta & Sons [2015 (318) ELT. 63 (All.)]. (Refer to Sr No.25 of the Compilation). Commr. Of Cus. (Imports). Mumbai V. Tullow India Operations Ltd., 2005 (189) [E.L.T.](#) 401 (SC)

The case of Tullow relates to exemption notification pertaining to exemption granted for petroleum operations. The Court held that the essentiality certificated produced after the importation is also in compliance of the Notification. The Appellants further submit that the recent decision of Supreme Court in Mother Superior-2021 (376) ELT 242 in the context of interpretation of an exemption notification applies in this case.

2.6 The Appellants further submit that the duty demand in present case is revenue neutral, as evidenced by below:

- a. In case of manufactured goods which have been exported, duty drawback is available
- b. In case of manufactured goods which have been supplied to ONGC projects, the supplies are against ICB Contracts. Thus, the same are deemed export, and deemed export benefits qua the same are available.

The Appellants further submit that the following export benefits are available to the Appellant for physical as well as deemed exports.

- a) Brand Rate of Duty Drawback- reimbursing the duties paid on the finished goods exported out of India
- b) Merchandise Exports from India Scheme (MEIS)
- c) Advance Authorization Scheme-granting completion exemption from payment of import duties on inputs physical/Export benefits

available on deemed exports (Supplies to ONGC under ICB set out in paragraph 7.3 of FTP

- d) Advance Authorization for deemed exports -granting exemption from payment of import duties on inputs
- e) Deemed Export Drawback - if duty paid inputs are used, drawback is granted by the DGFT
- f) Refund of Terminal Excise Duty - if excise duty is paid on the finished goods supplied for such projects

The Appellants further submit that the duty demand in present case is revenue neutral and demand must not be raised. Reliance in this regard was placed on the following case laws:

CCE & C (Appeals) vs Narayan Polyplast [2005 (179) ELT 20 (SC)] (Refer Sr. No. 26 of the Compilation). Cipla Limited vs Union of India (1995 (80) ELT 17 (Bom)] (Refer Sr. No. 27 of the Compilation). Maruti Cottex Limited vs Commissioner of C. Ex. Hyderabad-III [2005 (183) ELT. 393 (Tri-Bang)]. Maintained by the Hon'ble Supreme Court of India in Commissioner vs Ginni International Ltd [2007 (215) ELT A102 (SC)] (Refer Sr. No. 28 of the Compilation).

2.7 The Appellants further submit that no duty demand can be raised under Section 72 read with Section 73A, as the said Sections only apply to goods removed from warehouse without due permissions. As already demonstrated above in detail, the goods in question were removed from warehouse for further manufacture. It is not cleared for home consumption. The removal mentioned in these Sections refer to removal without the permission or knowledge of the department. Thus, these Sections are not applicable to demand duty. The Appellants further submit that the demands in the present case are in terms of Section 28(4) only, that too by invoking extended period of limitation. As stated above, the Appellant has been clearing the goods in the same process for the last 3 decades without any objection from the Department. Further, records were maintained all the time, which were also audited by the officers regularly. The Appellants further submit that this is not a case of short payment of duty or short levy of duty on account of suppression

etc. The facts are known to both the sides. Hence, extended period of limitation under Section 28 (4) of the Customs Act, 1962 for demanding duty under Section 72 & 73A of the Customs Act, 1962. Thus, Section 29(4) is inapplicable in present case. Reliance is placed on *Aban Loyd Chiles Offshore Limited vs Commissioner of Customs* [2006 (200) ELT 370 (SC)] wherein the Hon'ble Supreme Court of India has held that extended period of limitation cannot be invoked when the activities were carried on with the approval of the Department (Refer to Sr No.29 of the Compilation).

2.8 The Appellants further submit that the goods in question are not liable to confiscation as no wrong has been committed. Accordingly redemption fine also is not payable. Confiscation has been proposed under Section 111(j) and 111(o) of the Customs Act. Section 111(j) is only applicable to goods removed from warehouse without permission from Proper Officer. As set out above and in the Appeal in detail, the goods were removed from the warehouse with permission from the concerned Proper Officer. Thus, Section 111(j) is not applicable. The Appellants further submit that Section 111(0) is applicable only if any post import condition set out in the exemption has been violated, unless the non-observance of the condition was sanctioned by the Proper Officer. The post import condition allegedly violated in the present case is that the goods were not used for further manufacture in bonded warehouse. However, the undertaking of manufacturing outside the premises of bonded warehouse was permitted by the Proper Officer. Thus, the non-observance of the condition was sanctioned by the Proper Officer. Thus, there is no violation of Section 111(0). Further, it is not disputed that the manufactured goods were supplied to ONGC for undertaking petroleum operations, under valid DGH certification. Thus, on this account also it is proved that the post-import condition has not been violated. The Appellants further submit that redemption fine is also not payable as goods are no longer available for confiscation. Reliance in this regard is placed on the Tribunal's decision in the matter of *Hindalco Industries Ltd vs CC Ahmedabad* (2024 (2) TMI 251) wherein it has been held that when there is no seizure or provisional release of goods, redemption fine cannot be imposed. Submissions qua Penalty. The Appellants further submit that Penalty is not payable as no wrong has been committed by the Appellants. The Appellants further submit that no Penalty interest is payable qua the demand of CVD/SAD. Reliance is

placed on the case of Mahindra and Mahindra Limited (2022 (10) TMI 212) to state that no penalty could be imposed and no interest can be demanded qua demand of CVD/SAD under the Customs Act, 1962. The aforesaid decision has been affirmed by the Hon'ble Supreme Court by way of dismissal of the Special Leave Petition filed by the Department, vide Order dated 28.07.2023. The dismissal was also upheld by Review Petition order dated 09.01.2024.

3. Learned Authorised Representative relies on the impugned order. He further submits that M/s L&T had obtained the duty free goods availing the benefit of notification no. 12/2012- Cus dated 17.3.2012. This notification grants exemption to parts and raw materials for manufacture of goods for off shore oil exploration. One of the essential condition for availing the exemption is that the parts and raw materials so imported should be used in the in the manufacture of goods in accordance with section 65 of the Customs Act. This condition is unambiguous leaving no scope of any other interpretation. As per section 65 of the Customs Act, M/s L&T were required to carry out manufacturing activity within the area for which they themselves had obtained the licence. It is they, who had obtained a license for a small area under section 65, which by their own admission was not sufficient to carry out the manufacturing operations. They have themselves admitted in their defence reply that the manufacturing activity was carried out by them in an open yard adjacent to bonded warehouse. Thus it is established beyond any doubt that the condition of notification no. 12/2012-customs has not been fulfilled. The notification is to be interpreted in terms of the language used therein and is to be strictly followed.

3.1 Learned Authorized Representative further stated that the appellants have also relied upon procedure adopted by them since 1988 and the documents filed by them at different stages before the Central Excise/Customs officers. He submits that this argument cannot justify the wrong practice followed by them. The SCN has been issued subsequent to the issue of licences under section 58 and Permission to manufacture under section 65 of the Customs Act in 2014. Any wrong practice for an earlier period cannot justify the wrong done after 2014. He submits that as far as their claim that the procedure adopted by them was in the knowledge of department, the adjudicating authority has

given clear and unambiguous findings in this regard (Para 6.5.1 and 6.5.2 at page 257 of the Appeal). The documents presented before the Customs authorities at the time of import of goods and claiming exemption under notification no. 12/2012- Customs did not establish that the goods were being used for the manufacturing process outside the bonded warehouse. As far as documents presented to the authorities having jurisdiction over bonded warehouse is concerned, the appellants having got a warehousing licence and permission to manufacture under bond, had clearly bound themselves to fulfil all the requirements and to pay the duty in case of violation of any such condition.

3.2 He further stated that the appellant have argued that they were regularly audited by the department and no argument was raised. This plea is not acceptable. The adjudicating authority has clearly mentioned in his finding (para 6.6 of OIO at Page 257) that there was nothing on record before him to suggest that the audit plans covered the points raised in these SCNs. As per the bond given and as per the provisions of Customs Act, 1962, they should have paid the duty on their own when the goods were taken out of warehouse for manufacturing. In fact, they themselves had paid duty during the period July, 2017 to August, 2017, before their warehousing licence was amended to enlarge the area.

3.3 He submits that the appellant's argument that the phrase "manufacture or other operations in warehouse" should be interpreted keeping in the mind the nature of activity, nature of finished goods is also not tenable. They could have applied for the warehousing permission for a larger area in the year 2014 itself, which subsequently was done by them in 2017. The comparison with the ship building industry is also not tenable as the two are incomparable as given by the adjudicating authority in his findings in para 6.7 of OIO. The ship building is done on sea and they seek permission accordingly, which has not been done By L&T.

3.4 He submits that appellant's reliance on letter dated 6.6.2017 written by Commissioner and letter dated 7.2.2017 of the Chief Commissioner to the Board indicates that the matter was brought to the notice of the Department in 2017. However the fact remains that the goods were removed without payment of duty from warehouse and the conditions of notification were violated.

3.5 He further submits that the permission granted in 2017 is amending the licence issued in 2014. In 2017 the complete manufacturing unit in Hazira has been incorporated in the Appellant's licence issued under section 58. This amendment dates back to 2014.

3.6 He contended that appellant's contention that the permission given for the larger area in 2017 should be given effect from 2014, is also not tenable. There is nothing in the Act or Rules which empower any authority granting licence or permission to give it with retrospective effect. The case laws relied upon by the appellants have been distinguished by the adjudicating authority. In para 6.8 of Order-in-original.

3.7 He further submits that the principle of revenue neutrality will be applicable in this case. All the supplies by the appellants to ONGC are supplies to projects under ICB. Whatever duty is paid on the inputs is available as deemed export benefit to the appellants. Thus the demand of the duty itself is revenue neutral. The imported goods were used for supply to offshore oil exploration or exploitation projects. Thus the ultimate purpose of the imported goods has been fulfilled without causing any loss of exchequer.

3.8 Learned Authorised Representative further submits that their argument that had they paid duty, they would have been eligible for deemed export is not tenable. This cannot be an argument in favour of justifying the illegal act of removing goods from warehouse without payment of duty. Similarly, their argument of revenue neutrality cannot justify their violation of fulfilling an essential conditions of the exemption notification i.e. using the parts and raw materials in accordance with section 65 of the Customs Act. The concept of revenue neutrality cannot be applied in each and every case. The case laws relied upon by the appellants have been distinguished by the adjudicating authority (para 6.9, 6.10 and 6.10.1 of OIO refers).

3.9 No duty or interest is recoverable from the appellants on the imported raw materials/ inputs under section 72 and section 73A of the Customs Act, 1962. In the present case the goods were moved from one place to another only after due permission from the Departmental

Authorities. Proper records were maintained. Therefore, these two sections are not applicable as they both pertain to removal of goods without due permission.

3.10 Demand of duty by invoking section 28(4) of the Customs Act, 1962 is not applicable to the present case. In some SCNs, the duty has been demanded under section 28(4). One of the prerequisite of section 28(4) is the element of collusion or willful misstatement or suppression of facts. The appellants had been clearing the goods in the same process for almost three decades without any objection from the department. All the activities were done with proper permissions and [proper records were also maintained. Thus the extended period cannot be invoked.

3.11 Their contention that the invocation of section 28(4) in some SCNs will vitiate the SCN is also not tenable. In the SCNs issued by Commissioner of Customs, Nhava Sheva and Air Cargo Complex, Mumbai, the demand has been made in terms of section 72 and 73A read with section 28(4), while in the case of other SCNs the demand has been made in terms of section 72 and 73A of the Customs Act. The moment the goods were cleared from the port of importation under bond, the procedure for movement of goods under bond started. The Bonds executed by L&T drew its strength from the provisions of section 71, 72 and 73A of the Customs Act. In terms of these bonds M/s L&T had committed themselves to pay duty alongwith interest in case of violation of Customs Act and/or Bonds so executed. The reading of section 28(4) does not have any adverse impact on the demand so made. He submits that the appeal filed by the Appellants are liable to rejected.

4. We have considered the rival submissions. We find that undisputed facts that appellant obtained duty free goods availing benefit of Notification 12/2012-Cus dated 17.03.2012. One of the condition of the said notification is that the parts and raw materials imported should be used in the manufacture of goods in accordance with Section 65 of the Customs Act. The notification prescribes as under:

S. No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
357	84 of any other	Parts and	Nil	Nil	41

	Chapter	raw materials for manufacture of goods to be supplied in connection with the purposes of offshore oil exploration or exploitation			
Condition No.	Conditions				
42.	If,- (a) The parts and raw materials are used in the manufacture of goods in accordance with the provisions of section 65 of the Customs Act, 1962 (52 of 1962); and (b) A certificate is produced in each case to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, 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 goods are required for the purposes of off-shore oil exploration of exploitation.				

The section 58 of Customs Act 1962 read as under:

Licensing [SECTION 58. of private warehouses. — *The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a private warehouse wherein dutiable goods imported by or on behalf of the licensee may be deposited.*

Licensing SECTION 58A. of special warehouses.- (1) *The Principal Commissioner of Customs or Commissioner of Customs may, subject to such conditions as may be prescribed, licence a special warehouse wherein dutiable goods may be deposited and such warehouse shall be caused to be locked by the proper officer and no person shall enter the warehouse or remove any goods therefrom without the permission of the proper officer.*

(2) The Board may, by notification in the Official Gazette, specify the class of goods which shall be deposited in the special warehouse licensed under sub-section (1).

SECTION Cancellation of licence. 58B. — *(1) Where a licensee contravenes any of the provisions of this Act or the rules or regulations made thereunder or breaches any of the conditions of the licence, the Principal Commissioner of Customs or Commissioner of Customs may cancel the licence granted under section 57 or section 58 or section 58A :*

Provided *that before any licence is cancelled, the licensee shall be given a reasonable opportunity of being heard.*

(2) The Principal Commissioner of Customs or Commissioner of Customs may, without prejudice to any other action that may be taken against the licensee and the goods under this Act or any other law for the time being in force, suspend operation of the warehouse during the pendency of an enquiry under sub-section (1).

(3) Where the operation of a warehouse is suspended under sub-section (2), no goods shall be deposited in such warehouse during the period of suspension :

Provided *that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse.*

(4) Where the licence issued under section 57 or section 58 or section 58A is cancelled, the goods warehoused shall, within seven days from the date on which order of such cancellation is served on the licensee or within such extended period as the proper officer may allow, be removed from such warehouse to another warehouse or be cleared for home consumption or export :

Provided that the provisions of this Chapter shall continue to apply to the goods already deposited in the warehouse till they are removed to another warehouse or cleared for home consumption or for export, during such period.]

The section 65 of Customs Act 1962 read as under:

SECTION 65. Manufacture and other operations in relation to goods in a warehouse.

— (1) [With the permission of the Principal Commissioner of Customs or Commissioner of Customs and subject to the provisions of section 65A] and such conditions] as may be prescribed, the owner of any warehoused goods may carry on any manufacturing process or other operations in the warehouse in relation to such goods.

(2) Where in the course of any operations permissible in relation to any warehoused goods under sub-section (1), there is any waste or refuse, the following provisions shall apply : –

(a) if the whole or any part of the goods resulting from such operations are exported, import duty shall be remitted on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods exported :

Provided that such waste or refuse is either destroyed or duty is paid on such waste or refuse as if it had been imported into India in that form;

(b) if the whole or any part of the goods resulting from such operations are cleared from the warehouse for home consumption, import duty shall be charged on the quantity of the warehoused goods contained in so much of the waste or refuse as has arisen from the operations carried on in relation to the goods cleared for home consumption.

Goods brought for operations in warehouse to SECTION [65A. have ordinarily paid certain taxes. Notwithstanding anything to the — (1) contrary contained in this Act or the Customs Tariff Act, 1975 (51 of 1975.), the following provision shall, with effect from such date as may be notified by the Central Government, apply to goods in relation to which any manufacturing process or other operations in terms of section 65 may be carried out, namely :—

(A) the dutiable goods, which are deposited in the warehouse shall be goods on which the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) have been paid, and only for the purpose of the duty payable, other than the said tax and cess paid, such dutiable goods shall be warehoused goods;

(B) the dutiable goods shall be permitted to be removed for the purpose of deposit in the warehouse, where —

(i) in respect of the goods, an entry thereof has been made by presenting electronically on the customs automated system, a bill of entry for home consumption under section 46 and the goods have been assessed to duty under section 17 or section 18, as the case may be, in accordance with clause (a) of sub-section (1) of section 15;

(ii) the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) have been paid in accordance with section 47;

(iii) on removal of the goods from another warehouse in terms of section 67, a bill of entry for home consumption under clause (a) of section 68 has been presented and the integrated tax under sub-section (7) and the goods and services tax compensation cess under sub-section (9), of section 3 of the Customs Tariff Act, 1975 (51 of 1975.) have been paid before the goods are so removed from that other warehouse;

(iv) the provisions of section 59, subject to the following modifications therein, have been complied with, namely :—

(a) for the words “bill of entry for warehousing”, the words “bill of entry for home consumption” shall be substituted; and

(b) for the words “amount of the duty assessed”, the words “amount of duty assessed, but not paid” shall be substituted;

(C) the duty payable in respect of warehoused goods referred to in clause (A), to the extent not paid, is paid before the goods are removed from the warehouse in such manner as may be prescribed.

(2) The provisions of sub-section (1) shall not apply for the purpose of manufacturing process or other operations in terms of section 65 to dutiable goods which have been deposited in the warehouse or permitted to be removed for deposit in the warehouse prior to the date notified under that sub-section.

(3) The Central Government may, if it considers necessary or expedient, and having regard to such criteria, including but not limited to, the nature or class or categories of goods, or class of importers or exporters, or industry sector, exempt, by notification, such goods in relation to which any manufacturing process or other operations in terms of section 65 may be carried out, as may be specified in the notification, from the application of this section.]

The appellants have got a bonded warehouse notified by Customs way back in 1986. The area notified was not sufficient for the purpose of manufacturing activity of the appellant as the appellants are engaged in manufacturing large off-shore oils exploration related machinery. The appellants have been taking the material out of bonded space into the factory premises, within which the bonded space is located, for the purpose of actual physical manufacturing of goods. The entire process was happening in the knowledge of Revenue authority since 1986. The appellants were taking out the imported material from bonded warehouse to their factory premises for the purpose of manufacturing. The goods were manufactured and cleared by the appellant availing benefit of Notification 12/2012-Cus dated 17.03.2012. 8 show cause notices were issued to the appellant during the period 18.12.2018 to 04.07.2019. All the show cause notices were issued Section 72 of the Customs Act 1962. In some show cause notices invoked Section 73A of the Customs Act, was also invoked and some demand was raised by invoking section 28 and sub-section 28(4) of the Customs Act.

5. The appellant had obtained private bonded warehouse license under Section 58 of the Customs Act 1962 within the premises that were otherwise registered under Central Excise Act. The first license was granted on 31.03.1986 and thereafter license was renewed in the name of the appellant on 28.05.2014. The said license was amended on 29.11.2016 and again on 01.09.2017. The second amendment dated 01.09.2017 enlarged the bonded area under Section 58 to the full factory as per the request of the appellant.

6. The appellant had also obtained license under Section 65 of the Customs Act for undertaking manufacturing and other operations in Bond. The first license under Section 65 was issued to the Appellants on 31.03.1986. Thereafter, the license was issued in the new name of appellant on 28.05.2014 and it was subsequently amended on 01.09.2017. The aforesaid amendment took place consequent to the Revenue realizing that it is not possible to manufacture the kind of product that the appellants are manufacturing within the bonded premises. The appellant raised the said ground for amending their

license under Section 58 to cover the entire manufacturing unit registered under Central Excise vide their letter dated 06.11.2015. In the said letter they suggested as follows:

“8. While the aforementioned licensed ware house has limited area within this central excise registered manufacturing yard, the actual manufacturing takes place across the excise registered yard as a matter of practice followed till date. In this regard your good self may appreciate the fact that the Oil Exploration Platforms/Rigs/Floating Vessels/Ships cannot be manufactured with the four falls of warehouse as their multi complex manufacturing process is done in various stages and this require occupies ample space across the yard.

9. Now considering the extent of fabrication that we would be undertaking for the existing orders, huge amount of raw material would be coming under the bonded warehouse for further fabrication. In this regard a doubt has been raised over the availability of the space within the limited bonded ware house, where the licence was actually granted under section 58 of the Customs Act 1962.

10. To overcome this uncertainty we hereby would like to request your good self that our entire excise registered manufacturing yard may kindly be considered as Bonded Ware House under Section 58. This will enable us to manufacture the Oil exploration / Refining Machineries and related components without any ambiguity. The Licence No. 01/2014 dated 28.05.2014, if required, may kindly be amended accordingly.

11. In this regard we further request your good self that while considering the entire excise registered manufacturing yard as bonded warehouse u/s 58, the condition of locking the main gates of yard may not be insisted upon, as we also manufacture goods for Indian and foreign customer out of indigenous and imported goods cleared under foreign Trade policy scheme. As the movement of personnel and material other than bonded material may get restricted and entire general operations will get adversely effected. Your good self will appreciate that while inwarding the imported raw materialistom offerts inside the warehouse, the goods are physically verified by the excise / custom officers and similarly while clearing the manufactured goods out of such duty exempt goods, an ex-bond bill of entry is filed and after such clearances only material is cleared out of the manufacturing yard.”

7. The said issue was therefore raised by the Additional Commissioner with Under Secretary (LC) Central Board of Excise and Customs vide letter dated 07.02.2017. In the said letter following was observed:

“B) The Private Bonded Warehouse is used only for storing the imported material and 316as has the limited space, it is not feasible to execute and fabricate suc316 structure of offshore plants. M/s LTHE imports the material under Sr.No. 357 of Notification No. 12/2012-Cus dated 17.03.2012 and transfer to bonded warehouse on filing of in bond Bill of entry and double duty bond and the same goods are warehoused. Subsequently, the material is issued for the manufacturing under section 65 of the Customs Act, 1962 as per condition of Notification on the request of Licensee as and when required. All the manufacturing activity is being carried out in across yard / Central Excise Registered premises approved by the then Commissioner Central Excise, Customs, Service Tax, Surat-I and not in the Private Bonded Warehouse as required under Section 65 of the Customs Act, 1962. This practice is followed

since 1986. The licence get renewed every year by the Assistant Commissioner of Division with the approval of the Commissioner, Central Excise, Customs & Service Tax, Surat-II.

(C) Therefore, it is not feasible to manufacture the huge structures required for ONGC Platforms, Oil Exploration Machineries in the Private Bonded Warehouse as permitted manufacturing operations in the Private Warehouse space under section 65 of the Customs Act, 1962 due to the limited space of Private Bonded warehouse. In the case of ship building, a new Sr. No. 469A in place of Sr. No. 469 has been inserted in original Notification No. 12/2012-Customs dated 17.03.2012 vide Notification No. 54/2015-Customs dated 24.11.2015, by which import duty has been exempted subject to condition No. 5 i.e. the Importer has to follow the procedure set out in the Customs (Import of goods at concessional rate of Duty for manufacture of Excisable Goods) Rules, 2016 (Notification No. 32/2016-Customs (NT) dated 01.03.2016). In short, the Condition stipulated in the Sr. no. 469 A if made applicable in this case also, will sort out all the problems.”

8. The matter was again taken up by the Commissioner (Surat) with the Chief Commissioner, Vadodara Zone vide letter dated 06.06.2017, in the said letter following was observed:

“5.1 Further, on careful consideration of various goods manufactured by the assessee at Hazira location, it is my well considered view that the condition prescribed at Sr. No. 42 for Sr. No. 357 of the Notification No. 12/2012 Customs dated 17.03.2012 is not suitable and practicable due to following reasons:-

(i) The goods manufactured in the factory are very bulky and huge-size structure and also labour and machinery intensive.

(ii) some of the goods like floating structure etc are required to be partly manufactured in the manufacturing area of the factory premises and part of the process is also required to be carried out in coastal water for which M/s L& THEL is provided with the coastal frontage at sizable area. Monitoring its part manufacturing & other operation in such open area to the departmental officers is neither physibible, amenable and practicable.

(iii) There is a drastic transformation of raw materials & components used in the manufacture and the resultant product is totally different than the individual raw materials & components. Thereby is very difficult to establish usage of duty free inputs and other component materials.

Therefore, this office is of the view that the condition No. 42) of the said notification can be substituted with more practicable condition giving benefit of import duty free exemption vide Notification No. 32/2016-Customs(NT) dated 01.03.2016 i.e.CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY FOR MANUFACTURE OF EXCISABLE GOODS) RULES, 2016. Implementation of this scheme will be very easy practicable and efficient for the departmental officers as well as the assessee. Further, to protect revenue interest this scheme is more wider and precise to protect the revenue interest, should there be any violation or deviation in its compliance.

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8. It may be added that since the existing practice followed by M/s L& THEL is going on since 1986 and they are manufacturing goods of national

importance, which are supplied to Indian Navy, Coast Guard, ONGC etc. Since it has become the established customs practice which is in-operation for the last 33 years it would be unreasonable to stop it with immediate effect, and adversely effect the manufacture and clearance of various goods of National Importance. Therefore, under these situation I am requesting Division and range officers for maintaining status quo in respect of existing procedure till the new and revised procedure solving aforesaid difficulties are prescribed by the Board. Therefore the matter may be treated on urgent basis as in the coming GST scenario, in such situations issues will become highly confused and difficult to comprehend. Accordingly, it is kindly requested to address the situation as soon as possible in the interest to safeguard revenue as well as national strategic interest.”

9. Subsequently, the request of the appellant dated 06.11.2015 was accepted and the entire premises registered under Central Excise Act were converted into bond licensed under Section 58 of Customs Act on 01.09.2017.

10. From the above facts, it transpires that the activity for which the appellants are being charged was happening in full knowledge of the Revenue. The Conditions imposed under Section 58 and 65 licenses were imposable to follow and that fact was acknowledged by Revenue. The Revenue knew all these facts and allowed the appellants to use the area outside the bonded warehouse for the purpose of manufacturing activity. The Revenue did not, at any stage, crystallize the matter during more than 30 years it was followed. Further it is noticed that the Revenue has not made out any case to the effect that the imported goods were not used for stated purpose. No case of clandestine clearance was made out by Revenue and there is absolutely no allegation of diversion of any imported goods. The issue regarding covering entire premises within Section 58 of the Customs Act was raised by appellant themselves. From the above facts, the bonafides of the appellant cannot be doubted. When the permission to cover the entire premises was granted by Revenue, it was granted on the basis of a request made by the appellant on 06.11.2015 for amendment of their license issued on 28.05.2014.

11. The appellants have claimed that the benefit of the amendment should be given from the date of issue of license dated 28.05.2014 and not from the date of amendment dated 01.09.2017. They have relied on the decision of Tribunal in the case of Marico Ltd. 2019 (369) ELT 1175. In the said case following was observed:

“6. That the capital goods were installed, and utilized, at locations which had been, either originally or through amendment, approved by the licensing authority is not in question. Notification No. 44/2002-Cus., dated 19th April, 2002 is a composite exemption for facilitating an export promotion scheme. That the export obligation in pursuance of the license had been fulfilled is also not in question. The conditions in such notifications are intended to ensure that the element of control on capital goods is exercised without having to place those under physical supervision. The objectives of the notification, and indeed of the export promotion scheme in the Foreign Trade Policy, should prevail over technical irregularities that were repaired in the fullness of time. Visiting detriment of confiscation and penalties under Sections 111 and 112 of Customs Act, 1962 in the light of such rectification, and compliance with export obligation, would not be appropriate.”

12. The appellant has also relied on the following decisions:

- Telkar Food Products Pvt Ltd. 2007 (211) ELT 450 (Tri. Chennai)
- Condor Footwear (I) Ltd. 2019 (367) ELT 653 (Tri. Amd.)
- Arjun Sahlot 2016 (344) ELT 44 (Del.)
- Krishna Filaments Ltd. 2000 (115) ELT 148 (Tri.)

In the aforesaid cases the amendment in various licenses were held to be applicable from the date when the original license was issued.

- Telkar Food Products Pvt Ltd. 2007 (211) ELT 450 (Tri. Chennai)

“2. After hearing both sides and considering their submissions, we find that the appellants were obliged to export “Pickles” in terms of the licence issued on 31-8-1995 so as to be entitled to exemption from payment of duty on the capital goods imported by them under EPCG Scheme. The period allowed for this purpose expired on 31-8-2000. The licence was amended by DGFT on 2-7-1999 substituting “Detergent” for “Pickles”. This amendment dates back to the date of issue of the licence in the absence of any remarks to the contrary, of the licensing authority. It is also pertinent to note that the licensee did not ask for any clarification of the DGFT on the question whether the amendment would have only prospective effect. This conduct of the party amounts to acquiescence in the retrospective operation of the amendment. Admittedly, in this case, the requirement of exporting 10% of goods in the second year, 20% of the goods in the third year, 30% of the goods in the fourth year and 40% of the goods in the fifth year was not fulfilled by the importer. In any case, the period allowed for discharge of export obligation under the licence was only for five years from 31-8-1995, the date of issue of the licence. Admittedly, the exports of “Detergents” were commenced after 2-7-1999 and completed beyond this period. The condition relating to discharge of export obligation was not fulfilled by the importer as rightly held by the lower authorities and, therefore, as held by them, the benefit of the Notification is not admissible to the party.”

- Condor Footwear (I) Ltd. 2019 (367) ELT 653 (Tri. Amd.)

“5.2 The Revenue has relied on the decision of Hon’ble High Court of Punjab & Haryana in the case of *Vikram Overseas* (supra). It is seen that the facts in the said case are significantly different. In the said case, the amendment was substantial in nature whereas in the present case it is of procedural in nature. The Hon’ble High Court of Bombay in the case of *Bhilwara Spinners Limited v. UOI* - [2011 \(267\) E.L.T. 49](#) (Bom.) distinguished the decision of Punjab & Haryana High Court in the case of *Vikrant Overseas* (supra) on the ground that license was amended with a clear intention of having a retrospective effect. In the instant case the committee has clarified that any change in the ITC (HS) Code has no bearing on the benefits to be given under advance authorization issued under Para 4.7 of HBP. In this circumstance, we hold that amendment made to the license will have a retrospective effect and the benefit of the notification cannot be denied on the ground that the

classification of the goods did not match the classification specified in the advance license as long as the description of the goods matches with that prescribed in the license.”

13. In the instant case, it is noticed that Revenue also recognizes that the conditions imposed during earlier period were impracticable and would have defeated the very purpose of grant of license. The appellant could not have possibly manufactured the goods within the bonded area. In these circumstances, when revenue after recognizing this difficulty extended the Bonded area to the entire factory registered under Central Excise Act then said amendment can only be treated as curative and therefore, will have the effect from the date of issue of original license on 28.05.2014. More so, because the Revenue has not pointed out any misdemeanor on the part of the appellant and no diversion of goods has been noticed. The purpose of the Notification has clearly been achieved and no case of any diversion of goods has been made. The entire activity happened in the full knowledge of the Revenue. Furthermore, there is absolutely no loss of the Revenue as can be seen from the fact that Revenue has not raised any allegation about diversion of any goods or use of goods for the purpose other than that stated in Notification 12/2012 dated 17.03.2012. Also in these circumstances, Section 28 of the Customs Act cannot be invoked to raise demand for the period beyond the period of limitation. In view of above, the amendment made in 01.09.2017 will have to be treated as curative amendment having effect from 28.05.2014. Consequently, the demands made would not survive.

14. The appeal is therefore, allowed.

(Order pronounced in the open court on 05.12.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha