

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

REGIONAL BENCH - COURT NO. 3

CUSTOMS Appeal No. 185 OF 2011-SM

[Arising out of Order-in-Original/Appeal No 36-2011-COMMR-A--KDL dated 04.02.2011
passed by Commissioner of CUSTOMS-KANDLA]

Flexi Tuff International Limited

.... Appellant

Plot No. 94, Industrial Area No. 1, Pithampur,
DHAR, MADHYA PRADESH

VERSUS

Commissioner of Customs, Kandla

.... Respondent

CUSTOM HOUSE, NEAR BALAJI TEMPLE,
KANDLA, GUJARAT

APPEARANCE :

Shri Mahesh Raichandani and Shri Rithik Jain, Advocates for the Appellant
Shri A R Kanani, Superintendent (AR) for the Revenue.

CORAM: HON'BLE MR. C L MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING : 16.12.2024

DATE OF DECISION : 19.12.2024

FINAL ORDER NO. 13218/2024

C L MAHAR :

The brief facts of the matter are that the appellant are manufacturer and exporter of plastic bags and sacks falling under Chapter Heading 39 of the schedule to Central Excise Tariff Act, 1985. The appellant are exporting the manufactured products under DEEC Scheme and importing duty free material for manufacture of the same. The appellant have been granted advance license by the Joint Director General of Foreign Trade, Bhopal under Notification No. 43/2002-Cus dated 19.04.2002 as amended, under which the appellant are entitled to import duty free raw materials such as HDPE, LDPE granules, Master Batch and High Speed Diesel (HSD) etc.

2. The Notification No. 43/2002-Cus dated 19.04.2002 exempts materials imported into India against an advance license issued in terms of sub-paras (a) and (b) of paragraph 4.1.1 of the Export and Import Policy from the whole

of duty of Customs leviable thereon which is specified in the first schedule of the Customs Tariff Act, 1975 and whole of the additional duty, safeguard duty and anti-dumping duty leviable under sections 3, 8 and 9A of the Customs Tariff Act.

2.2 It has been the contention of the department that additional duty of Customs on HSD oil has been imposed on import of HSD under section 116 of the Finance Act, 1999 at the rate of Rs.1 per liter with effect from 01.03.1999 which is subsequently enhanced to Rs. 1.5 per liter with effect from 01.03.2003 vide section 168 of the Finance Act, 2003. The department is of the view that since the additional duty of Customs at the rate of Rs. 1 per liter was imposed by the Finance Act, the appellant is not entitled to the benefit of Notification No. 43/2002-Cus dated 19.04.2002.

3. Shri Mahesh Raichandani, learned Advocate appearing for the appellant submitted that the matter is no longer *res-integra* as this Tribunal in the case of *Atlantic Shipping Pvt. Limited vs. Commissioner of Customs, Jamnagar (Prev.) – 2019 (370) ELT 577 (Tri. Ahmd.)* has already decided the matter in favour of the appellant.

4. I have also heard Shri A R Kanani, learned Superintendent (AR) appearing for the department who has reiterated the findings as given in the impugned order-in-appeal.

5. After considering the submissions made by both the sides, I am of the view that the matter is no longer *res-integra* as this Tribunal has already decided the issue in case of *Atlantic Shipping Pvt. Limited vs. Commissioner of Customs, Jamnagar (Prev.) – 2019 (370) ELT 577 (Tri. Ahmd.)*. The relevant extract of the same is reproduced below: -

“4. We have gone through rival submission, we find that Section 116 of Finance Act reads as follows:

“Additional duty of customs (high speed diesel oil).

116. (1) In the case of goods specified in the Second Schedule, being goods imported into India, there shall be levied and collected as an additional duty of customs an amount calculated at the rate set forth in the said Schedule.

(2) The additional duty of customs referred to in sub-section (7), shall be in addition to any other duties of Customs chargeable on such goods under the Customs Act, or any other law for the time being in force.

(3) The provisions of the Customs Act, and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of customs leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of Customs on such goods under Act or those rules and regulations, as the case may be.”

Sub-section (3) thereof extends the benefit of exemptions under Customs Act also to the additional duty of customs levied under Section 116 of Finance Act, 1999. Ld. Counsel relied on the decision of Tribunal in the case of *Toyota Kirloskar Motor P. Ltd.* (supra). In the said case while interpreting provision similar to sub-section (3) of Section 116 of Finance Act, 1999, in respect of levy of National Calamity Contingent Duty levied under Section 129 of the Finance Act, 2001, the Tribunal observed as follows :

“4. Heard both sides. The National Calamity Contingent Duty was introduced in the Budget of 2001 by virtue of Section 129 of the Finance Act, 2001. Section 129 is reproduced hereinbelow :

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

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

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

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

.....

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

From the Section 129 of the Finance Act, 2001 and also from the above Circular issued by the C.B.E. & C., it is very clear that Exemption Notification 108/95 is applicable also to NCCD. The Learned Advocate further brought to our notice the decision of this Tribunal in the case of *Gokak Mills v. CCE, Bangalore* - [2001 \(129\) E.L.T. 523](#) (Tri. - Bang), wherein it was held while interpreting Notification No. 214/86-Central Excise that the said notification issued under Rule 8(1) of Central Excise Rules exempts only basic excise duty and does not cover additional duty of excise leviable under Additional Duties of Excise

(Goods of Special Importance) Act, 1957. The above was challenged in the Apex Court and the Apex Court allowed the appeal reversing the Tribunal's decision [[2002 \(146\) E.L.T. A309](#) (S.C.)].

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

Drawing the ratio of said decision, we find that so long as the exemption Notification No. 94/96-Cus. is extended to the goods, the benefit of exemption has to be allowed in respect of additional duty of Customs levied under sub-section (1) of Section 116 of Finance Act, 1999.

5. Ld. AR relied on the decision of Tribunal in case of *Essar Oil* (supra). It is seen that the said decision was passed in the circumstance when provision of sub-section (3) of Section 116 was not brought to the notice of the Tribunal, thus, the said decision is of no avail to the Revenue. Ld. AR also relied on the decision of Tribunal in the case of *S.J.L.T. Textile Pvt. Ltd.* (supra). It is seen that the said decision was passed *ex parte*, without any representation from the appellant. Ld. AR relied on the Instruction F. No. 305/148/2004-FTT, dated 11-10-2004, which contains direction contrary to the ratio of decision in the case of *Toyota Kirloskar Motor P. Ltd.* (supra). It is seen that this is a mere direction without any justification, therefore, no comment are warranted on the same.

6. In view of above, it is held that the benefit of exemption from additional duty of Customs levied under sub-section (1) of Section 116 of Finance Act, 1999 has to be extended to the goods which are entitled to exemption under Notification No. 94/96-Cus. All the appeals are allowed in above terms."

6. Following the above decision of the Division Bench of this Tribunal, I hold that the matter has already been decided in favour of the appellant and therefore, the impugned order-in-appeal is without any merit. I set-aside the same. Appeal is accordingly allowed.

(Pronounced in the open court on 19.12.2024)

(C L Mahar)
Member (Technical)