CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Customs Appeal No.70012 of 2016

(Arising out of Order-In-Original No. 07-COMM-NOIDA-II-2015-16, dated - 18/08/2015 passed by Commissioner, Customs & Central Excise, Noida-II)

M/s Dixon Technologies India Private Limited
.....Appellant

(B-14 & 15, Phase-II
Noida, U.P. 201305)

VERSUS

Commissioner, Customs & Central Excise, Noida-II

....Respondent

(Formula-1 Hotel, Wegmans Business Park
Plot No.3, KP-III, Greater Noida)

WITH

Customs Appeal No.70149 of 2015

(Arising out of Order-In-Original No. 07-COMM-NOIDA-II-2015-16, dated - 18/08/2015 passed by Commissioner, Customs & Central Excise, Noida-II)

Commissioner, Customs & Central Excise, Noida-II

....Respondent

(Formula-1 Hotel, Wegmans Business Park
Plot No.3, KP-III, Greater Noida)

VERSUS

M/s Dixon Technologies India Private Limited
.....Appellant

(B-14 & 15, Phase-II
Noida, U.P. 201305)

APPEARANCE:

Shri B.L. Narasimhan, Advocate &
Shri Atul Gupta, Advocate for the Assessee
Shri Santosh Kumar, Authorised Representative for the Revenue

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70952-70953/2024

DATE OF HEARING : 11.12.2024
DATE OF DECISION : 11.12.2024

SANJIV SRIVASTAVA:

These appeals one by the Assessee (Appellant) and other by Revenue are directed against Order in Original NO-07/COMMISSIONER/NOIDAII/ 2015-16 dated 19.08.2015 of Commissioner, Central Excise Commissionerate, Noida II, Greater Noida. By the impugned order following has been held:

ORDER

(i) *I confirm demand of Special Additional Duty (SAD) amounting to Rs.1,23,36,708.00 (Rs. One Crore Twenty Three Lacs Thirty Six Thousands Seven Hundred Eight only) payable on the goods imported by M/s Dixon Technologies India Pvt Ltd, Khasra No.1050, Central Hope Town, Selaqui Industrial Area, Dehradun, Uttrakhand through M/s Arshiya FTWZ during the period April 2013 to August 2013 under Section 28 of Customs Act, 1962 read with Section 3 (5) of the Customs Tariff Act 1985. I order that the same be paid forthwith.*

(ii) *I drop the demand of Rs.27,70,479.00 (Rupees Twenty Seven Lacs Seventy Thousands Four Hundred Seventy Nine Only) involved on Bill of Entry No.239 dated 08.08.2013 and Bill of Entry No.240 both dated 08.08.2013 since the importer in the case of the above two Bills of Entry is 1 not M/s Dixon Texhnologies India Pvt Ltd but M/s Dixon Global Pvt Ltd. Further the demand pertaining to these two Bills of Entry has also already been dealt with by the Joint Commissioner of Central Excise Noida II in the O- in- O No. 06/JC/ 2015-16 dated 29.05.2015 as detailed in para 5.1 1 of this order.*

(iii) *I order payment of interest at applicable rates on the above amount of short paid SAD under Section 28 AA of Customs Act, 1944.*

(iv) *I refrain from imposing penalty on the party for reasons detailed in para 5.13 of this order.*

2.1 Appellant is manufacturer of various lighting and Electronic Products. They had imported goods (inputs) through M/s Ashiya FTWZ, Khurja, for using in the manufacture of their finished goods i.e. Washing Machines.

2.2 Based on an information that Appellant was importing goods from M/s Arshiya FTWZ, Khurja and were availing exemption from payment of Special Additional Duty under Notification No. 45/2005-Cus dated 16.05.2005, enquiry was initiated.

2.3 The statement of Shri Pankaj Sharma, Chief Operating Officer of Appellant was recorded on 22.01.2014, wherein, he *interalia* stated that:-

- He is working as Chief Operating Officer of Appellant, who are engaged in manufacturing of Washing Machines for different brands.
- For the period 01.04.2013 to 31.08.2013, he submitted a chart showing details of 12 imports made through M/s Arshiya FTWZ Khurja and have taken benefit of exemption from payment of SAD to the tune of Rs.1,64,83,1 18/.
- The Imported goods have not been sold in the market as such but they have used the imported goods in their production line and ultimately, when the finished goods are sold (containing the imported goods as inputs), they pay the local taxes on full amount, which includes the value of imported goods, locally procured inputs as well as value addition done by them.
- Exemption vide Notification No. 45/2005-Cus dated 16.05.2005 as amended by Notification no. 18/2011-Cus dated 01.032011 is available if the imported goods are not exempted from payment of Sales Tax/ VAT by the State Government. As the components imported by them are not exempt for payment of Sales Tax or VAT in the state of Uttarakhand, they believe that the benefit of said exemption from payment of Special Additional Duty is available to them.
- at the time of import, first of all, they filed in-bond bill of entry at Arshiya FTWZ (SEZ portal) and then get approval of the specified officer of Customs for allowing in bond

movement of the goods. Accordingly, the goods were received by Arshiya FTWZ on their behalf and were kept in their warehouse. Depending on their requirements, they cleared the goods from Arshiya FTWZ. At the time of clearance, they filed a regular bill of entry for the import clearance of goods and after due assessment and after payment of duties,

- they are a client of M/s Arshiya Supply Chain Management Pvt. Ltd., who in turn are a unit of Arshiya International Limited (now renamed as M/s Arshiya Limited) FTWZ. They have an agreement with M/s Arshiya Supply Chain Management Pvt. Ltd. as a client.
- As per the CBEC circular No. 44/2012 dt. 30.12.2013, wherein the issue of exemption from SAD under said Notification No.45/2005-Cus has been clarified, they had to pay the SAD at the time of import, as they had used the imported goods in the manufacture of finished goods and had not sold the imported goods as such on payment of local taxes like VAT etc.

2.4 A Show Cause Notice dated 12.05.2014 was issued to the Appellant alleging that they -

- had imported the goods (which are in the nature of their inputs) for use in the manufacture of finished goods in their factory;
- did not sell the goods as such in the market on payment of local taxes, though they used to pay the local taxes on the finished goods manufactured in their factory by using imported goods;
- As per Section 3(5) of the Customs Tariff Act, 1985, the Additional Duty (SAD) is levied to counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India;

- The explanation appended with the said Section 3(5) clearly provides that in this sub-section, the expression "sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India" means the sales tax, value added tax, local tax or other charges for the time being in force, which would be leviable on a like article if sold, purchased or transported in India or, if a like article is not so sold, purchased or transported, which would be leviable on the class or description of articles to which the imported article belongs, and where such taxes, or, as the case may be, such charges are leviable at different rates, the highest such tax or, as the case may,be, such charge;
- Notification No. 45/2005-Cus dated 16-05-2005 provides exemption to the goods cleared from a special economic zone and brought to any other place in India from the whole of the SAD, provided that no such exemption shall be applicable if such goods, when sold in domestic tariff area, are exempted by the State Government from payment of sales tax or value added tax;
- as per the notification, if the local taxes are exempted by the State Government, the SAD is payable;
- The Central Board of Excise & Customs clarified the issue vide its Circular No. 44/2013-Customs dated 30.12.2013, Hence, a condition was imposed that the exemption from SAD would be available only if such goods, when sold in the DTA, are not exempted from VAT/ Sales Tax. The intention was to avoid double taxation.
- in the case of clearance which are n the nature of stock transfer from SEZ/ FTWZ unit to the DTA unit for self-consumption i.e. otherwise than for sale as such, no sales tax /VAT is leviable on such a transaction. As no sales tax/ VAT is leviable on the said transaction, SAD is payable;

- Para 4 of the said circular clarifies that "the benefit of SAD exemption on goods cleared from the SEZ/ FTWZ unit into DTA unit on stock transfer basis for self-consumption i.e. otherwise than for sale as such, is not available under notification No.45/2005-Customs, dated 16.05.2005 In such cases, SAD would be leviable.

2.5 Appellant were called upon to show cause as to why:-

(i) Special Additional Duty amounting to Rs. 1,51,07,205/- (Rs. One Crore fifty one lakh seven thousand two hundred five only) on the goods imported through M/s Arshiya FTWZ during the period w.e.f. April, 2013 to August, 2013, should not.be demanded & recovered from them under Section 28 of the Customs Act, 1962 read with Section 3(5) of the Customs Tariff Act, 1985;

(ii) Interest should not be charged from them under Section 28AA of the Customs Act, 1962 on the above mentioned amounts of Special Additional Duty not paid;

(iii) Penalty should not be imposed upon them u/s 112 & 117 of the Customs Act, 1962 for the contravention of the provisions of Customs Act, 1962.

2.6 Show cause notice has been adjudicated as per the impugned order referred in Para 1 above. Aggrieved both Appellant and Revenue have filed these appeals.

2.7 In their appeal Appellant has challenged the confirmation of demand and revenue has filed appeal against non imposition of penalties on the Appellant

3.1 We have heard Shri B L Narsimhan and Shri Atul Gupta, Advocate for the Appellant and Shri Santosh Kumar Authorized Representative for the Revenue.

3.2 Arguing for the Appellant learned counsel submits that:

- The goods in the present case were not cleared from the warehouse in SEZ on sale but were stock transferred to their manufacturing units. These goods as such were used in the further production of their finished goods which have been cleared on payment of appropriate taxes including sales tax/ vat.
- Importing the condition of payment of VAT/ sales tax as necessary pre-requisite for claiming this exemption under Notification No 45/2005-Cus will be contrary to the express wordings of the notification.
- Notification grants exemption to all goods cleared from SEZ and in case of sale of goods at the time of clearance, the proviso imposes the condition that the goods should be subjected VAT/ sales tax.
- The circular No 44/2013-Cus which imposes such condition is contrary to the express provisions in the notification and if is held to be valid then the same cannot be clarificatory to be retrospective.
- Reliance is placed on the following decisions:
    - Pekay Re-rolling Mills (P) Ltd. [2009 (13) STR 305 (SC)]
    - Tata Teleservices Ltd. [2006 (194) ELT 11 (SC)]
    - Sundar Micro Circuits Ltd. [2008 (229) ELT 641 (SC)]
    - Hemraj Gordhandas [1978 (2) ELT J350 (SC)]
    - Hind Plastics [1994 (71) ELT 325 (SC)]
    - VVF [2015 (315) ELT 303 (T-Mum)]
    - VVF Ltd. [2014 (312) ELT 166 (T-Mum)]
    - Micro Links [2014 (303) ELT 99 (T-Ahmd)]
    - CRI Limited [**2020-TIOL-1646-CESTAT-KOL**]

3.3 Authorized representative re-iterated the findings recorded in the impugned order for confirming the demand and the grounds taken in the appeal filed by revenue against non imposition of penalty.

4.1 We have considered the impugned order along with the submissions made in appeals and during the course of arguments.

4.2 Impugned order records the findings as follows:

> *5.4 On merits the Noticee has contended hat exemption benefit of SAD under Notification 45/2005 Cus for goods under stock transfer from FTWZ to their unit, when goods are not exempt from VAT/sales tax is admissible on the ground that notification benefit is "qua good' and not 'qua transaction' and noticee relied upon an advance ruling. Further noticee contended that Circular 44/2013 is bad in law in as much as it introduced a new condition. Noticee contended that the notification should be read as per words in the notification and not as per supposed intention. Further the Noticee contended that the Circular has prospective effect and cannot have retrospective effect.*
>
> *5.5 I the above reference, I find that in terms of Notfn No. 102/2007-Cus dated 14.09.2007, clearances from ports other than SEZ, importers have to pay SAD on goods imported and then claim refund of SAD from jurisdictional Customs Authorities on production of proof of payment of VAT/Sales tax on such goods. In such a situation I find that no exemption shall be available to the importers in case of stock transfer of goods. While in case of clearances from SEZ the SAD is exempt vide Notification 45/2005-Cus, ab-initio if the goods imported are not exempt from VAT/sales tax. Since varying practices were being followed, CBEC issued a clarificatory circular No. 44/2013 dated 30.12.2013 where in para 3 it is clarified that* ***"in the case of clearances which are in the nature of stock transfer from SEZ/FTWZ unit to the DTA unit for self-consumption i.e. otherwise than for sale as such, no sales tax/VAT is leviable on such a transaction. As no sales tax/VAT is leviable on the said transaction, SAD is payable".***
>
> *5.6 I further find that the clarificatory circulars are applicable retrospectively as the law has not gone any change before and after the circular. In this regard I place reliance on the decision of Hon'ble Tribunal in the case of Aspi Rustam ji Balsara Vs CCEx, Vapi, 2006 (197) ELT 345 (Tri.-Mumbai). Further, in the case of GL Litmus Events Pvt Ltd 2015(315)ELT 39 (Tri. Del) Hon'ble Tribunal has held that-*
>
>> *"____The Appellants laid a lot of stress on the judgment in Hon'ble Supreme Court in the case of Zile Singh (supra). It is seen that in the said judgment the Hon'ble Supreme Court categorically stated that "it is a cardinal principle of construction that every statute is*

> *prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation'. The Hon'ble Supreme Court in the said judgment had, however, held that the presumption against retrospective operation is not applicable to curative or declaratory statute _____"*

The circular herein, I find, being clarificatory in nature is effective retrospectively

5.7 On the issue of interpretation of statutes and words used therein, it is settled law that exemption notification being in the nature of exemption has-to be construed strictly. Hon'ble Apex Court in the case of Bharat Diagnostics 2014 (307)ELT 632 SC observed as follows:

> *"5. With regard to the interpretation and construction of a notification granting exemption, it is settled that at the first instance, strict interpretation would apply, that is to say in the case of ascertaining its applicability. Thereafter, the Court may adopt the liberal approach within the particulars of the said notification. The case of Gammon (Ltd.v.Commr. of Customs, (201 1) 12 SCC 499 = 201 1 (269)_E.L.T. 289 (S.C.), reiterated the well-settled position of law that a provision providing for an exemption has to be construed strictly."*

5.8 The following cases would, further make the position of law clear on this point

(a) In the case of Commr. of Customs (Imports) v. Tullow India Operations Ltd., (2005) 13 SCC 789 = 2005 (189) E.L.T.401 (S.C.), it was held that:

> *"The principles as regards construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning where for the notification has to be interpreted in terms of its language, once an Assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning."*

(b) In the case of A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala, (2007) 2 SCC 725, it was held that

> *"____The general principles with regard to construction of exemption notification are not of much dispute. Generally, an exemption notification is to be construed strictly, but once it is found that the entrepreneur*

> *fulfils the conditions laid down therein, liberal construction would be made."*

(c) Further in the case of Collector of Customs (Preventive) v. Malwa Industries Ltd.,(2009) 12 SCC 735 = 2009 (235)E.L.T. 214 (S.C.), it was held that :

> *" ____An exemption notification should be read literally. A person claiming benefit of an exemption notification must show that he satisfies the eligibility criteria. Once, however, it is found that the exemption notification is applicable to the case of the Assessee, the same should be construed liberally."*

(d) In above reference, I also refer to case laws as regards interpretation of statutes. In the case law 2012 (286) ELT 321 SC Connaught Plaza Pvt Ltd., Hon'ble Apex Court observed as follows:

> *"16. The general rules of interpretation of taing statutes were succinctly summarized by this Court in Oswal Agro Mills Ltd. & Ors.v.Collector of Central Excise & Ors. - 1993 Supp (3) SCC 716 at page 720 = 1993 (66) E.L.T. 37 (S.C.); as follows*
>
> *"4. The provisions of the tariff do not determine the relevant entity of the goods. They deal whether and under what entry, the identified entity attracts duty. The goods are to be identified and then to find the appropriate heading, sub-heading under which he identified goods|products would be classified. To find the appropriate classification description employed in the tariff nomenclature should be appreciated having regard to the terms of the headings read with the relevant provisions or statutory rules or interpretation put up thereon. For exigibility to excise_ duty the entity must be specifed in positive. terms under a particular tariff entry. In its absence it must be deduced from a proper construction of the tariff entry. There is neither intendment nor equity in a taxing statute. Nothing is implied. Neither can we insert nor can we delete anything but it should be interpreted and construed as per the words the legislature has chosen to employ in the Act or rules. There is no room for assumption or presumptions. The object of the Parliament has to be gathered from the language used in the statute*
>
> *…. .. ..*
>
> *_____Therefore, one has to gather its meaning in the legal setting to discover the object which the Act seeks to serve and the purpose of the amendment brought about. The task of interpretation of the statute is not a*

mechanical one. It is more than mere reading of mathematical formula. It is an attempt to discover the intention of the legislature from the language used by it, keeping always in mind, that the language is at best an imperfect instrument for the expression of actual human thoughts. It is also idle to expect that the draftsman drafted it with divine prescience and perfect and unequivocal clarity. Therefore, court would endeavour to eschew literal construction if it produces manifest absurdity or unjust result. In Manmohan Das y, Bishun Das : (1967) 1 SCR 836, a Constitution Bench held as follows

" ___The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as, where a literal construction would reduce the provision to absurdity or prevent manifest intention of the legislature from being carried out

43. We are unable to persuade ourselves to agree with the submission. It is a settled principle in excise classification that the definition of one statute having a different object, purpose_ and scheme cannot be applied mechanically to another statute. As aforesaid, the object of the Excise Act is to raise revenue for which various goods are differently classified in the Act. The conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for non-levy of excise_ duty, thereby causing a loss of revenue. [See; Medley Pharmaceuticals Limited v, Commissioner of Central Excise and Customs, Daman - (201 1) 2 SCC 601 = 2011 (263)_E.LT. 641 (S.C.) and Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited - 2009 (12) SCC 419 = 2009 (237) E.L.T. 225 (S.C.)]. The provisions of PFA, dedicated to food adulteration, would require a technical and scientific understanding of "ice-cream' and thus, may require different standards for a goods to be marketed as "ice-cream'. These provisions are for ensuring quality control and have nothing to do with the class of goods which are subject to excise duty under a particular tariff entry under the Tariff Act. These provisions are not a standard for interpreting goods mentioned in the Tariff Act, the, purpose and object of which is completely different."

(e) Further as per case law 2014(301)ELT 593 SC Biswanath Bhattacharya, Hon'ble Apex Court observed that meaning of word occurring in statute cannot be ascertained without examining context and scheme of statute in which the expression occurs:

> *"32. Lord Green in Bidie v, General Accident, Fire and Life Assurance Corporation [(1948) 2 All ER 995 at 998] said in the context of ascertaining the meaning of an expression in any statute that "Few words in the English language have a natural or ordinary meaning in the sense that they must be so read that their meaning is entirely independent of their context'*
>
> *33. Chief Justice Sikri in His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another - (1973) 4 SCC 225 dwelt on this subject referring to two English decisions and one American decision stating in substance that the meaning of a word occurring in a statute cannot be ascertained without examining the context and also the scheme of the Act in which the expression occurs."*

(f) Further as regards interpretation of statute and exemption, Hon'ble Apex Court in the case of Mangalore Chemicals and Fertilizers 1991(055)ELT 437 (SC) affirmed in subsequent case laws as follows:

> *"12. Shri Narasimhamurthy against relied on certain observations in Collector of Central Excise, Bombay-I & Anr. v. Mis. Parle Exports (P) Ltd. [1989 (1) SCC 345 = 1988 (38)E.L.T. 741 (S.C.)], in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax-payers and should be construed against the subject in case of ambiguity. It is an equally well-known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of M/s. Parle Exports (P) Ltd. relied upon by Sri Narasimhamurthy, it was observed*
>
> *"While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."*
>
> *The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process*

> *arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this, Court in Union of India & Ors. vs M/s. Wood Papers Ltd. & Ors, [1991 JT (1) 151 at 155]:*
>
> *"____Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction.. "*
>
> *(Emphasis supplied)"*

(g) Further in the case of WPIL Ltd 2005(181)ELT359 (SC) Hon'ble Supreme Court of India has observed as under-

> *"15. The learned Counsel for the Appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd. [(1995) 3 SCC 454]. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties."*

5.9 Further the noticee is contending that mere absence of exemption notification for sales tax/VAT is sufficient for taking benefit of notification by stressing that proviso to the notification does not demand sale of imported goods. As discussed in above case laws, interpretation of statute cannot be such as to lead to an absurd interpretation and causing loss of revenue to the state. Interpretation of words has to be done in the context as well as the scheme of statute in which it occurs. Further relevant proviso can also be interpreted to read as no sale is involved, stock transfers are exempted from payment of sales tax/VAT as levied and collected by the State Government. In addition, Advance Ruling delivered on 28.05,2013 is not entirely conclusive, delivered prior to the Circular 44/2013, meant for imports of GE, is inapplicable in case of the noticee, especially in view of provisions of Section 28J of Customs Act.

5.10 In view of the above discussion I hold that in terms of interpretation of exemption notification read with the *circular having a retrospective applicability, exemption from SAD is not available to the Noticee on the goods cleared from FT WZ and stock transferred to their manufacturing unit*

5.11 The Noticee has taken a plea that out of the 12 Bills of Entry two Bills of Entry do not pertain to them and as such exemption availed on those two Bills of Entry cannot be demanded from them. I have examined the said twelve Bills of Entries and I find the Bill of Entry No.239 dated 08.08.2013 and Bill Of Entry No.240 dated 08.08.2013 involving SAD amount of Rs.8,55,890.00 and Rs.19,14,607.00 pertain to M/s Dixon Global Pvt. Ltd. and not to the Noticee in the instant proceedings i.e. M/s Dixon Technologies India Pvt. Ltd. Further, the demand of SAD on the said two Bill of Entries was the subject matter of SCN issued under C. No v (15) Adj./ Noida/Arshiya/ 162/2014/15010- 11 dated 06.08.2014 which has since been disposed of by the Joint Commissioner, Central Excise Noida II vide Order in Original No.06/ JC/ 2015 -16 dated 29.05.2015. I thus find force in Noticee's argument that SAD of Rs.27,70,497.00 involved on these two Bills of Entries cannot be fastened on them as the matter has already been adjudicated vide the above mentioned order in original. Hold accordingly.

5.12 On the issue of charging interest on the amount of duty short paid by the Noticee, I place reliance on Hon'ble Supreme Court of India's judgment in the case of SKF INDIA LTD. 2009 (239) E.L.T. 385 (S.C.) wherein it has been held that if differential duty is payable for whatever reason, the interest is invariably required to be paid.

*5.13 As regards imposition of penalty, I find that SCN proposes imposition of penalty under Sections 112 and 117 of Customs Act on the ground that the noticee had knowingly availed of the benefit of SAD exemption which was otherwise inadmissible to them. From copies of undertakings given at the time of clearance of imported goods in DTA submitted by noticee, it is seen that there is a clause according to which noticee would submit a certificate from an independent Chartered Accountant within three months from the date of clearance of the goods in DTA to the effect that the said goods have been used in the manufacture of their final products whereon the VAT/sales tax as applicable shall be paid in due course. I find from CA certificate as submitted by the noticee and relied upon in SCN that it has been stated that *we certify that the above imported material have been used in the manufacture of final products at the said factory/unit and the VAT/sales tax as applicable on such final products are being paid in due* *course. I also note that as per decision of the Unit Approval Committee (UAC) constituted under the provisions of Section 13 of the SEZ Act,2005, n its meeting held on 16:03.2013, and in order to streamline the process of extending the exemption under Notification No. 45/2005-Cus, a manufacturer-importer was allowed to stock transfer the goods from a Unit in FTWZ to self in DTA by availing the exemption under Notfn. No. 45/2005-Cus, as amended, subject to following certain procedural requirements as prescribed by the UAC. As per the procedure, the DTA Buyer (manufacturer-importer). inter-alia was required to submit an Undertaking to the effect that it shall, within 3 months of such clearance of goods from FTWZ, submit a Chartered Accountant's certificate to the effect that the goods have been used in the manufacture of other goods which in turn would be sold on payment of VAT/sales Tax as applicable thereon. For this purpose, they were required to submit an undertaking to the FTWZ Customs. The said period of 3 months was enhanced retrospectively to 120 days vide UAC decision in its meeting held on 30.07,2013. I do not find that any allegation has been made in SCN that the noticee had failed to follow the procedure laid out by UAC for clearance of imported goods in DTA on stock transfer basis, I find that the Noticee followed the procedure laid down by the UAC in minutes of the meeting held on 16.03.2013and availed SAD exemption. However, with the issuance of CBEC Circular No,44/2013- Customs dated 30.12.2013, the impact was that the UAC guidelines dated 16.03,2013 were rendered to be in non- conformity with the clarification given by the CBEC which was a later date than the UAC guidelines. In such circumstances, I find that, in the interest of justice, the party cannot be faulted and penalized. I thus refrain from imposing penalty on the noticee under Sections 112 and 117 of Customs Act for contravention of provisions of Customs Act, 1962. 5.14 n view of the above discussion and findings, I confirm demand of SAD amounting to Rs.1,23,36,708.00 on the Noticee under Section 28 of the Customs Act 1962 read with Section 3 (5) of the Customs Tariff Act 1985 along with interest as applicable under Section 28AA of Customs Act. Further, I drop the demand of Rs,27,70,479.00 involved on Bill of Entry No.239 dated 08.08.2013 and Bill of Entry No,240 dated 08.08.2013 which are in favour of M/s Dixon Global Pvt Ltd. I, however, refrain from imposing any penalty under Sections 112 and 117 of Customs Act, 1962 for the reasons given above in para 5.13.*

4.3 Notification No. 45/2005-Cus dated 16.05.2005 as amended by the notification No 18/2011-Cus dated 01.03.2011 read as follows:

> *"In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods cleared from a Special Economic Zone and brought to any other place in India in accordance with the provisions of the Special Economic Zones Act, 2005 (28 of 2005) and Special Economic Zones Rules, 2006, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975):*
>
> *Provided that no such exemption shall be applicable if such goods, when sold in domestic tariff area, are exempted by the State Government from payment of sales tax or value added tax.*
>
> *Explanation- For the purpose of this notification, "special economic zone" means the special economic zones notified by the Government of India, under section 4 of the Special Economic Zones Act, 2005 (28 of 2005).*

Two distinct phrases have been used in main body of the notification and the proviso. From the main body of the Notification it is evident that the exemption has been granted in respect of all the clearance made from SEZ to DTA. However in case of sale of goods at the time of clearance from SEZ to DTA, proviso provides that exemption is available on when it is shown that goods are subject to sales tax/ VAT. Thus exemption from payment of sales tax or VAT is not to be examined qua clearance of the goods from the SEZ as such, but qua the kind of goods, which when sold in Domestic Tariff Area ("DTA") were exempted from payment of sales tax or VAT. If the same goods, when would have been sold in the DTA exempted from payment of sales tax or VAT, then the benefit of the Notification was not available

4.4 Undisputedly the goods, which were cleared from the SEZ were cleared on stock transfer basis and were not sold. Thus they were not subjected to sales tax or VAT by the State.

However the said goods were not exempt from payment of the sales tax/ VAT. Thus, the benefit of the exemption from payment of SAD on such goods on clearance from the SEZ was available. The benefit of the exemption cannot be denied by reading a requirement of actual sale of the same goods, which were cleared from the SEZ.

4.5 Central Board of Excise & Customs has vide Circular No. 44/2013-Customs dated 30.12.2013, clarified as follows:-

1. *"It has been brought to the notice of the Board that varying practices are being followed by the field formations regarding exemption from SAD on goods cleared from SEZs / Free Trade Warehousing Zones (FTWZ) into the DTA under notification No.45/2005-Customs, dated 16.05.2005. The issue raised is whether the benefit f exemption from SAD under this notification would be available when a DTA unit imports goods and routes it through SEZ/ FTWZ for self-consumption i.e. in the nature of stock transfer from SEZ/ FTWZ.*
2. *The matter has been examined by the Ministry. Notification No. 45/2005-Customs, dated 16.05.2005 exempts from SAD goods cleared from SEZ / FTWZ and brought into DTA. The notification clearly states that the exemption shall not be available if such goods, when sold in DTA, are exempt from payment of sales tax / VAT. Prior to the issue of notification, it was brought to the notice of the Ministry that in some States sales tax is exempted in respect of DTA clearances by SEZ units. Further, in certain cases, such as stock transfer of goods from an SEZ unit to its unit in the DTA, no sales tax is levied. Hence, a condition was imposed that the exemption from SAD would be available only if such goods, when sold in the DTA, are not exempted from VAT/ sales tax. The intention was to avoid double taxation.*

3. *In the case of clearances which are in the nature of stock transfer from SEZ/ FTWZ unit to the DTA unit for self-consumption i.e. otherwise than for sale as such, no sales tax / VAT is leviable on such a transaction. As no sales tax / VAT is leviable on the said transaction, SAD is payable.*
4. *In view of the above, it is clarified that the benefit of SAD exemption on goods cleared from the SEZ / FTWZ unit into DTA unit on stock transfer basis for self-consumption i.e. otherwise than for sale as such, is not available under notification No.45/2005-Customs, dated 16.05.2005. In such cases, SAD would be leviable."*

4.6 The same issue with regards to denial of exemption under Notification No 45/2005-Cus by relying on the circular No 44/2013 was considered by the Kolkata bench in the case of CRI Limited [**2020-TIOL-1646-CESTAT-KOL**] and following has been held:

> *"6. The crux of the issue involved in this case is whether the benefit of Notification No.45/2005 as amended granting exemption from "SAD" is available in respect of "Blanks" cleared from the "SEZ Unit" of the Appellant by way of stock transfers to its "DTA Unit". The scope of the said Notification is reproduced below.*
>
> *"In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods cleared from a special economic zone and brought to any other place in India in accordance with the provisions of the Foreign Trade Policy 2004-2009, from the whole of the additional duty of customs leviable thereon under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975).*
>
> *Provided that no such exemption shall be applicable if such goods, when sold in domestic tariff area, are exempted by the State Government from payment of sales tax or value added tax."*
>
> *The Notification exempts all goods "cleared from a SEZ" and "brought to any other place in India". The nature of clearance, whether by way of sale or otherwise, is not qualified in any manner in the body of the Notification. The proviso which embodies the condition/test governing the exemption gets attracted only if the goods which are the subject matter of*

clearance, when sold in the DTA, are exempted from the payment of Sales Tax/VAT. In the instant case, it is undisputed that the clearance of blanks to the "DTA" is not by way of sale and that the underlying goods are not exempted by the State Government from the levy of VAT. The adjudicating Authority has himself accepted that such blanks attract VAT @ 5% as Ball Pen parts and the same is also evident from a sample Tax Invoice dated 20 April 2014 enclosed as part of the Appeal Paper Book. Therefore, the proviso is not attracted at all. There is no exemption from VAT/Sales Tax but just a deferral of the VAT/Sales Tax liability until the sale takes place. We also find that the issue involved herein is squarely covered by the decision of the division bench of the Tribunal in the case of Serum Institute of India (supra) [refer para 5 & 6]. The decision of the AAR in the case of GE India (supra) also supports the case of the Appellant. We are in complete agreement with the contention of the Appellant that the Circular cannot curtail the scope of an exemption notification which deserves to be interpreted strictly and on its own terms as held by the Hon'ble Supreme Court in the Tata Tele Services case (supra)."

4.7 Further in case of National Products [FINAL ORDER NO.-70507/2024 dated 22.07.2024 in Customs Appeal No.70586 of 2019] Allahabad bench has held as follow:-

4.4 Commissioner (Appeals) has relied upon the Circular No 44/2013-Custom dated 13.12.2013 holding that the said circular being clarificatory in nature should have retrospective effect, and shall be applicable to the clearances affected by the Appellant vide Bill of Entry dated 31.05.2013. We do not find any merit in such an assertion. No conditions could have been imposed by way of a Circular to restrict the benefit available in terms of the Notification. Further, anything which imposes additional tax liability could not have retrospective effect unless and until specifically provided for by way of legislation. Such interpretation is but confiscatory in nature and needs to be rejected outright. Hon'ble Supreme Court has in case of Martin lottery Agencies [2009-TIOL-60-SC-ST] observed as follows:

"30. Mr. Parasaran has referred to Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors. [(1997) 5 SCC 482] = 2002-TIOL-445-SC-IT to contend that clarificatory statute would be retrospective in nature. On legal principle, there may not be any quarrel with the said proposition. Therein, however, this court was considering a case where two interpretations of Section 22 of the Income-tax Act were possible. It was opined that if one interpretation is possible and the same is clear, the next thing to be considered would be what would be the effect of

the amendment. Referring to Benion's Statutory Interpretation and G.P. Singh's Principles of Statutory Interpretation, it was held:

"An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit.

A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law."

It furthermore noticed the decision of the Constitution Bench in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas and Anr. [(1968) 3 SCR 623] = 2002-TIOL-700-SC-MISC, wherein it was opined that an Explanatory Act is generally made to supply an obvious omission or to clear up doubts as to the meaning of previous Act. We are herein not concerned with such a situation. In W.P.I.L. Ltd., Ghaziabad v. Commissioner of Central Excise, Meerut, U.P. [(2005) 3 SCC 73] = 2005-TIOL-51-SC-CX-LB, whereupon again Mr. Parasaran placed strong reliance, this Court, while dealing with an exemption notification which is a piece of subordinate legislation, held:

"Such a notification merely clarified the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties."

31. The question as to whether a Subordinate Legislation or a Parliamentary Statute would be held to be clarificatory or declaratory or not would indisputably depend upon the nature thereof as also the object it seeks to achieve. What we intend to say is that if two views are not possible, resort to clarification and/or declaration may not be permissible. This aspect of the matter has been considered by this Court in Virtual Soft Systems Ltd. v. Commissioner of Income Tax, Delhi- I [(2007) 9 SCC 665] = 2007-TIOL-18-SC-IT, holding:

"It may be noted that the amendment made to Section 271 by the Finance Act, 2002 only stated that the amended provision would come into force with effect from 1.4.2003.

The statute nowhere stated that the said amendment was either clarificatory or declaratory. On the contrary, the statue stated that the said amendment would come into effect on 1.4.2003 and therefore, would apply to only to future periods and not to any period prior to 1.4.2003 or to any assessment year prior to assessment year 2004- 2005. It is the well settled legal position that an amendment can be considered to be declaratory and clarificatory only if the statue itself expressly and unequivocally states that it is a declaratory and clarificatory provision. If there is no such

clear statement in the statute itself, the amendment will not be considered to be merely declaratory or clarificatory.
Even if the statute does contain a statement to the effect that the amendment is declaratory or clarificatory, that is not the end of the matter. The Court will not regard itself as being bound by the said statement made in the statute but will proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is an amendment which is intended to change the law and which applies to future periods."
32. We are also not unmindful of the fact that the said decision has been overruled in Commissioner of Income Tax-I, Ahmedabad v. Gold Coin Health Foods Pvt. Ltd. [(2008) 11 SCAL E 497] = 2008-TIOL-152-SC-IT. A bare perusal of the said decision would, however, show that a Three Judge Bench of this Court noticed that the Act intended to make the position explicit which otherwise was implicit. The Bench went back to the provisions of the Original Act to hold that the clarification issued by the Parliament was in tune with the actual interpretation of the original provision. In that view of the matter, it was held:
"As noted by this Court in Commissioner of Income Tax, Bombay & Ors. v. Podar Cement Pvt. Ltd. & Ors. [(1997) 5 SCC 482] = 2002-TIOL-445-SC-IT the circumstances under which the amendment was brought in existence and the consequences of the amendment will have to be taken care of while deciding the issue as to whether the amendment was clarificatory or substantive in nature and, whether it will have retrospective effect or it was not so."
33. We may also notice that in that judgment itself a distinction has been made with a clarificatory provision and a substantive provision to opine that Explanation 4 was clarificatory in nature and not a substantive provision.
To the same effect is the decision of this Court in SEDCO Forex International Drill. Inc. & Ors. v. Commissioner of Income, Tax, Dehradun & Anr. [(2005) 12 SCC 717] = 2005-TIOL-145-SC-IT. The explanation which was in question was added by Finance Act, 1983 with effect from 1979 was to the following effect:
"Explanation. -- For the removal of doubts, it is hereby declared that income of the nature referred to in this clause payable for service rendered in India shall be regarded as income earned in India."
Similar expression is to be found in the instant case. However, in SEDCO the question which arose for consideration was interpretation of the words `off period'. While considering the question as to whether salary for the off period was taxable as arising out of services rendered in

India, this Court noticed that there was a reasonable nexus between salary earned for the off period and the services rendered in India.

34. The Gujarat High Court in CIT v. S.G. Pgnatal [(1980) 124 ITR 392 (Guj)] = 2003-TIOL-709-HC-AHM-IT held that words `earned in India' occurring in clause (ii) must be interpreted as "arising or accruing in India" and not "from service rendered in India". Opining that the High Court proceeded on an incorrect hypothesis, it was held:

"The High Court did not refer to the 1999 Explanation in upholding the inclusion of salary for the field break periods in the assessable income of the employees of the Appellant. However the respondents have urged the point before us.

In our view the 1999 Explanation could not apply to assessment years for the simple reason that it had not come into effect then. Prior to introducing the 1999 Explanation, the decision in CIT v. S.G. Pgnatale (supra) = 2003-TIOL-709-HC-AHM-IT was followed in 1989 by a Division Bench of the Gauhati High Court in Commissioner of Income Tax v. Goslino Mario reported in [(2002) 10 SCC 165]. It found that the 1983 Explanation had been given effect from 1.4.1979 whereas the year in question in that case was 1976- 77 and said:

". . . it is settled law that assessment has to be made with reference to the law which is in existence at the relevant time. The mere fact that the assessments in question has(sic) somehow remained pending on April 1, 1979, cannot be cogent reason to make the Explanation applicable to the cases of the present Assessees. This fortuitous circumstance cannot take away the vested rights of the Assessees at hand"."

35. Reverting to the decision of a Kerala High Court in CIT v. S.R. Patton [(1992) 193 IT R 49 (Ker)] = 2002-TIOL-2390-SC-IT wherein Gujarat High Court's judgment was followed, this Court noticed that explanation was not held to be a declaratory one but thereby the scope of Section 9(1)(ii) of the Act was widened. The law in the aforementioned premise was laid down as under:

"17. As was affirmed by this Court in Goslino Mario (supra), a cardinal principle of the tax law is that the law to be applied is that which is in force in the relevant assessment year unless otherwise provided expressly or by necessary implication. [See also: Reliance Jute and Industries. v. CIT [(1980) 1 SCC 139]. An Explanation to a statutory provision may fulfil the purpose of clearing up an ambiguity in the main provision or an Explanation can add to and widen the scope of the main section (See: Sonia Bhatia v. State of U.P. [(1981) 2 SCC 585 at 598]. If it is in its nature clarificatory then the Explanation must be read into the main provision

with effect from the time that the main provision came into force (See: Shyam Sunder v. Ram Kumar [(2001) 8 SCC 24 (para 44)]; Brij Mohan Laxman Das v. CIT[(1997) 1 SCC 352 at 354], CIT v. Podar Cement [(1997) 5 SCC 482 at 506]. But if it changes the law it is not presumed to be retrospective irrespective of the fact that the phrase used are 'it is declared' or 'for the removal of doubts'.

18. There was and is no ambiguity in the main provision of Section 9(1)(ii). It includes salaries in the total income of an Assessee if the Assessee has earned it in India. The word "earned" had been judicially defined in S.G. Pgnatale (supra) by the High Court of Gujarat, in our view, correctly, to mean as income "arising or accruing in India". The amendment to the section by way of an Explanation in 1983 effected a change in the scope of that judicial definition so as to include with effect from 1979, "income payable for service rendered in India".

19. When the Explanation seeks to give an artificial meaning 'earned in India' and bring about a change effectively in the existing law and in addition is stated to come into force with effect from a future date, there is no principle of interpretation which would justify reading the Explanation as operating retrospectively." (Emphasis supplied)

36. It is, therefore, evident that by reason of an explanation, a substantive law may also be introduced. If a substantive law is introduced, it will have no retrospective effect. The notice issued to the Assessee by the Appellant has, thus, rightly been held to be liable to be set aside. Subject to the constitutionality of the Act, in view of the explanation appended to this, we are of the opinion that the service tax, if any, would be payable only with effect from May, 2008 and not with retrospective effect.

37. In a case of this nature, the Court must be satisfied that the Parliament did not intend to introduce a substantive change in the law. As stated hereinbefore, for the aforementioned purpose, the expressions like `for the removal of doubts' are not conclusive. The said expressions appear to have been used under assumption that organizing games of chance would be rendition of service. We are herein not concerned as to whether it was constitutionally permissible for the Parliament to do so as we are not called upon to determine the said question but for our purpose, it would be suffice to hold that the explanation is not clarificatory or declaratory in nature.

4.8 Thus we do not find any merits in the impugned order wherein it has confirmed the demand by relying on Circular No 44/2013, and holding the same as clarificatory and hence retrospective in operation. Such a interpretation is goes contrary to the decisions of the hon'ble Supreme Court referred below:

- **Tata Teleserevices Ltd. [2006 (194) ELT 11 (SC)]**

> ***"10.*** *We are of the view that the reasoning of the Bombay Bench of the Tribunal as well as that of the Andhra Pradesh High Court must be affirmed and the decision of the Delhi Tribunal set aside insofar as it relates to the eligibility of the LSP 340 to the benefit of the exemption notification. The Andhra Pradesh High Court was correct in coming to the conclusion that the Board had, in the impugned circular, pre-determined the issue of common parlance that was a matter of evidence and should have been left to the Department to establish before the adjudicating authorities. The Bombay Bench was also correct in its conclusion that the circular sought to impose a limitation on the exemption notification which the exemption notification itself did not provide. It was not open to the Board to whittle down the exemption notification in such a manner. The exemption notification merely reproduced the language of Entry 8525-20-17 and since the exemption notification merely reproduced the tariff entry, the limitation sought to be imposed by the Board would tantamount also to reading the limitation into the classification itself. Since the issue would be ultimately a question of evidence the onus was on the Department to prove by appropriate evidence that the goods were classifiable under 8525-20-19 being the residuary entry. This the Department could have done by negativing the claim of the importers that the goods were classifiable under Tariff Entry 8525-20-17 and by establishing that the imported goods could not reasonably be classified under any other head. In this particular case the onus had not been discharged by the Revenue. The only evidence on record was the opinion sought for by the Ministry of Finance itself and given by the Department of Telecommunications to the effect that the Model LSP 340 was in fact covered by the phrase "cellular telephone". Sine there is no dispute that the technology used in LSP 340 and the hand held mobile phone is the same there is no warrant to limit either the tariff entry or the exemption notification to hand held cellular phones. Neither the range nor the size would make any difference."*

- **Intercontinental (India [2008 (226) ELT 16 (SC)]**

> *"5. The High Court by the impugned order has accepted the writ petition by holding that the Central Board of Excise and Customs could not, by issuing a circular subsequent to the*

issuance of the notification, add a new condition thereby restricting the scope of the exemption notification. It was held that the impugned Circular No. 40/2001-Cus., dated 13-7-2001 being contrary to the Notification No. 17/2001-Cus., dated 1st March, 2001 could not be sustained as it cannot override the said notification. In para 16, the High Court observed as under :

"In relation to entry at Sr. No. 29 no condition is prescribed. Similarly no condition is prescribed in relation to entry at Sr. No. 34 or even in entry No. 28. If the Notification No. 17 has not provided for any condition, in our opinion, subsequent circular cannot impose such a condition as the same would tantamount to rewriting Notification No. 17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with Section 159 of the Act, a notification under Section 25 of the Act requires publication in the official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification No. 17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification before each House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give licence to the executive to bypass/override the legislature and cannot be countenanced."

6. We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down."

- **Sundar Micro Circuits Ltd. [2008 (229) ELT 641 (SC)]**

"5. The issue relating to effectiveness of a Circular contrary to a Notification statutorily issued has been examined by this Court in several cases. A Circular cannot take away the effect of Notifications statutorily issued. In fact in certain cases it has been held that the Circular cannot whittle down the Exemption Notification and restrict the scope of the Exemption Notification or hit it down. In other words it was held that by issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down cannot be imposed. The principle is applicable to the instant cases also, though the controversy is of different nature."

4.9 The impugned order in fact quotes a series of the decisions with regards to the strict or literal interpretation of the provisions of statute (Fiscal Statutes) but has miserably failed to apply the said principles while interpreting the exemption notification under consideration. It imports the interpretation/ clarification given by CBEC subsequent to the imports and clearance of the goods from warehouse, to interpret the Notification 45/2005-Cus. Thus though there can be no dispute with regards to the principles of interpretation referred in the impugned order and the decisions relied upon, their application in this manner to the case in hand cannot be justified.

4.10 As we do not find any merits in the demand confirmed by the impugned order and are setting aside the same, the appeal filed by the revenue becomes inconsequential. Thus the same needs to be dismissed.

5.1 Customs Appeal No.70012 of 2016 filed by the Appellant is allowed.

5.2 Customs Appeal No.70149 of 2015 filed by the Revenue is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

Nihal