CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

Customs Appeal No. 82 of 2010

(Arising out of Order-in-Appeal No.62/2009 dated 28.10.2009 passed by the Commissioner of Customs (Appeals), Cochin.)

Commissioner of Customs
Custom House
Cochin - 682 009.

Appellant(s)

Versus

M/s. Cochin International Airport Ltd
Kochi Airport P.O.
Nedumbassery,
Cochin – 683 111.

Respondent(s)

Appearance:

Mr. K. A. Jathin, Dy. Com. (AR) — For the Appellant

None — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20688 /2023

Date of Hearing: 15.06.2023
Date of Decision: 15.06.2023

Per : R. BHAGYA DEVI

This is an appeal filed by the Revenue against the impugned Order-in-Appeal No.62/2009 dated 16.11.2009.

2. M/s. Cochin International Airport Ltd., the appellant, imported spare parts for fire crash tender from Austria vide Bill of Entry No.5920 dated 11.12.2007 for clearance against duty

credit entitlement certificate No.1010026179 under 'Served from India scheme' claiming benefit of Notification No.92/2004 dated 10.9.2004. The benefit of Notification was denied on the ground that the spares of crash fire tenders were not eligible for the same. However, the Commissioner (Appeals) held that para 2 of the Notification excludes only import of vehicles and not spares, hence, the benefit of Notification was extended and the Department is now in appeal against the impugned order dated 16.11.2009.

3. None for the respondents.

4. Heard learned Authorised Representative for the Revenue, who reiterated the findings of the Original Authority.

5. The Notification No.92/2004 dated 10.9.2004 reads as under:

> "**Exemption to imports under Served from India Scheme Certificate**-
>
> ……
>
> 2. Exemption under this Notification shall not be available to vehicles under said certificate even if such vehicle is freely importable under the Foreign Trade Policy."

The above Notification at Para 2 very categorically mentions that exemption is not available to vehicles under said certificate if such vehicles is freely importable under the Foreign Trade Policy. The items imported are admittedly spares for vehicles and hence, the question of denying the benefit of Notification does not arise. Hon'ble Supreme Court in the case of **AMD Industries Ltd. vs Commissioner of Trade Tax, Lucknow: 2023 (383) ELT 369 (SC)**, in para 8.3 held that:

> **"8.3** In the present case, the appellant was manufacturing/producing "Spun Line Crown Cork" used for sealing the glass bottles. With the use of modern technologies, now the appellant is manufacturing "Double Lip Dry Blend Crowns", which is also used for sealing the glass bottles. The earlier product being manufactured by the appellant was used for sealing glass bottles and subsequently the additional product produced with the use of modern technology is also being used for the same purpose namely, "sealing glass bottles". Therefore, the same cannot be said to be manufacturing of goods different from being manufactured before such diversification. With the passage of time, due to advancement in technology, if there is a replacement of the old machinery with the new machinery for improvement in quality and quantity of a product, at the most, it can be said to be expansion and/or modernization, but it cannot be said to be "diversification", which is "manufacturing of goods different from the goods manufactured before such diversification". In a case of "diversification", the effect has to be that the quality and quantity of the product should have been improved and/or increased but if the ultimate use is the same, the product manufactured on use of modern and/or advanced technology cannot be said to be manufacturing the different goods for claiming the exemption from payment of trade tax. The words used in Section 4A are very clear and unambiguous. As per the settled proposition of law and as observed hereinabove, the Statute and more particularly, the exemption provisions are to be read as they are and to be construed literally and should be given a literal meaning. Giving the literal meaning to the exemption provision namely, Section 4A, it cannot be said that the appellant is entitled to the exemption as claimed."

6. Accordingly, the impugned order is upheld and Revenue's appeal is dismissed.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)