CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

Regional Bench COURT-2
Customs Appeal No.21552 of 2015

[Arising out of the Order-in-

Appeal No.COC-CUSTM-OOO-APP-475/14-15 dated 16.04.2015 passed by the Commissioner of Customs (Appeals), Cochin-9.]

M/s. Bharat Petroleum Corporation Ltd., ...**Appellant**
Refinery, Ambalamugal,
Kochi, Cochin
Kerala – 682 302

VERSUS

Commissioner of Customs, ...**Respondent**
Customs House,
Kochi – 682 009.

Appearance:
Mr. Kuryan Thomas, Advocate Appeared for Appellant
Mr. Rajesh Shastry, Authorized Representative for Respondent

Coram:
Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

<u>Final Order No. 21607 of 2024</u>

Date Of Hearing: 06.03.2024

Date Of Decision: 05.09.2024

Per: P.A. Augustian

The issue in the present appeal is whether levy of safeguard duty is applicable on the import of 'Seamless steel pipes' under Project Import Scheme as per Section 8(b) of the Customs Tariff Act, 1975 read with Notification No. 02/2014 Cus-(SG) dated 13.08.2014.

2. M/s. Bharat Petroleum Corporation, limited, the Appellant had imported 'Seamless steel pipes' from China under Project Import Regulation Scheme, 1986 for their 'Integrated Refinery Expansion

Project (IREP)'. Since the goods are imported under Project Import Regulation Scheme, essentiality certificate was issued by Ministry of Petroleum and Natural Gas and the Project is registered with the Respondent. The Respondent had allowed clearance of the goods provisionally under a Bond pending finalization of the assessment of imports under Project Import Scheme. The subject goods were assessed under Customs Tariff Chapter Heading 9801 of the Customs Tariff Act, 1975, as per Section 157 of the Customs Act, 1962 and Project Import Regulations, 1986.

3. The Department after the clearance of the goods raised a query on the applicability of safeguard duty. The query was raised proposing classification of the pipes imported under Customs Tariff Chapter Heading (CTH) 7304 49 00, as against the classification claimed under Customs Tariff Chapter Heading (CTH) 98010019. The appellant contended that there cannot be a different classification for goods imported, once the import is under a registered Project Import. The Adjudicating Authority, held that safeguard duty needs to be based on the normal classification of the goods and safeguard duty would be applicable to Project Imports, unless there is specific exemption from safeguard duty. The Appellate Authority also held that safeguard duty would be applicable unless the same is specifically exempted. Aggrieved by the impugned order the appellant filed the appeal before this Tribunal.

4. The learned Counsel during the hearing submits that; the orders of the original Authority as well as the Appellate Commissioner are unsustainable in law; the goods imported were classified under Customs Tariff Item entry CTH 98010019 of First Schedule to the Customs Tariff

Act, 1975, while clearing the goods for Home Consumption and while making payment of BCD, CVD and Cesses; classification not being altered, there cannot be a different classification for levy of Safeguard Duty as the very levy of safeguard duty originates from Section 8(b) of the Customs Tariff Act, 1975; when a project is registered under the Project Import Regulations, the classification for the purpose of levy of duty would be under Customs Tariff Chapter Heading (CTH) 9801 (Ref: Chapter Note-2 to Chapter-98); Chapter Note-1 to Chapter 98 stipulates that the said chapter is to be taken to apply to all goods, even though they may be covered by a more specific heading elsewhere in the First Schedule; therefore, there cannot be a different classification for the 'seamless Steel pipes' imported by the appellant, other than under CTH 9801; the original authority instead of considering whether safeguard duty applies to "Project Import" by looking into the relevant provisions governing the levy of safeguard duty and the relevant Notification, went to confirm levy of safeguard duty stating that there is no exemption provided in Notification No. 02/2014-Customs (SG) dated 13.08.2014); the contention of the original authority is clearly erroneous as no safeguard duty could be levied without an express provision for levy of safeguard duty in the case of "Project Import" by changing the classification to the normal classification of the goods imported.; the Appellate Commissioner also held that; there being no specific exemption to PSUs, safeguard duty is chargeable, when the case of the appellant was with regard to the very jurisdiction to levy safeguard duty on "Project imports"; the Appellate Commissioner erred in upholding order of the original authority; the appellant with reference Notification No. 5/2012-Customs (SG) dated

20.12.2012) contented that no safeguard duty can be levied on "Project Imports" if it is not specifically provided for in the Notification levying safeguard duty, unlike in the case of Notification No. 5/2012-Customs (SG) dated 20.12.2012), there is no specific levy of safeguard duty on "Project Imports" under Notification No. 02/2014-Customs (SG) dated 13.08.2014; this specific issue raised by the appellant, though referred to in the order of the Appellate Commissioner, no finding is rendered on the same; the levy of safeguard duty by the original authority and its confirmation by the Appellate Commissioner is without authority of law as Notification No. 02/2014- Customs (SG) dated 13.08.2014 does not provide for levy of safeguard duty on "Project Imports".

5. Further the learned counsel relied on the following decisions;

i. Radha Rani v. Collector of Customs, New Delhi reported in 2002 (150) E.L.T. 907 (Tri. - Del.)

ii. Appraiser, Madras Customs v. Tamil Nadu Newsprint Papers Ltd., reported in 1988 (36) E.L.T. 272 (Mad.)

iii. Tamil Nadu Newsprint Papers Ltd. v. Appraiser, Appraiser Dept., Cus. House, reported in 2000 (116) E.L.T. 3 (S.C.)

6. Learned Authorized Representative (AR) for the Revenue reiterated the finding in the impugned order and submits that Appellate authority held that Notification No. 02/2014 Cus-(SG) dated 13.08.2014 issued under Section 8(b) of the Customs Tariff (Identification and Assessment of Safeguard Duty Rules, 1997), does not provide for any exemption like other Notifications, where specifically this has been mentioned. Thus, impugned order is sustainable.

7. Heard both sides and perused the records.

8. We find that the respondent proposed to impose safeguard duty as per Notification No. 02/2012-Cus (SG) dated 13.08.2014. The

appellant claimed that the 'Safeguard duty' is applicable only to specified items falling under Customs Tariff Chapter Heading (CTH) 7304, whereas the goods imported by them are assessed under Customs Tariff Chapter Heading (CTH) 9801. However, the Respondent demanded safeguard duty on the ground that Rule 13 of Customs Tariff (Identification and Assessment of Safe Guard Duty) Rules, 1997, states; *"**imposition of duty on non-discriminatory basis** - Any safeguard duty imposed under Rule 10 or Rule 12 shall be on a non-discriminatory basis and applicable to all imports of such article irrespective of its source"*; further such 'Safeguard duty' is in addition to any other duty imposed under Customs Tariff Act or any other law for the time being in force. Since there is no specific exemption Notification issued for 'safeguard duty' on import of 'Seamless steel tubes', Adjudication authority classified the goods under Customs Tariff Chapter Heading 9801 of the first Schedule of Customs Tariff Act, 1975. The Adjudicating authority confirmed the classification under Customs Tariff Chapter Heading 9801.

9. Learned Counsel for the Appellant during the hearing draws our attention to S.No.3 of the Notification No. 5/2012-Cus (S.G) dated 20.12.2012, wherein it is specifically mentioned that the items at Sl. No. 1 or 2, if cleared under any other Tariff Heading including project import, rate of 'safeguard duty' is 35% in the first year and 25% for second year. Therefore, the Ld. Counsel submits that where imports under project import are to be excluded the same is mentioned in the Notification as it has been done in Notification No. 5/2012-Cus (S.G). In the absence of any such mentioned in the impugned Notification No. 2/2012-Cus (SG), which was applied by the department in the

Appellant's case, on the grounds that 'safeguard duty' is imposable on the imported goods and there is a non-discriminatory clause under Rule 13 of the Customs Tariff (Identification and Assessment of Safe Guard Duty) Rules, 1997, even though Notification No. 02/2012-Cus(SG) does not specifically include imports made under project import under Ch 9801, it is presumed that no safeguard duty is applicable, when same goods are imported under the category of Project Imports. Learned Counsel further relied on the decisions of the **M/s Radha Rani Vs. CC, Customs-2002 (150) E.L.T 907 (Tri.Del), CC Vs. Tamil Nadu News Print Ltd-1988 (36) E.L.T 272 (Mad) and M/s Tamil Nadu News Print Ltd., Vs. Appraiser, Appraiser Department, Customs House-2000 (116) E.L.T 3 (SC).** The Learned Counsel further submits that as per the decision of the Tribunal in the matter of **M/s Radha Rani (supra**) it is held that;-

> *"9. The appellants has contended that while for the basic customs duty, the goods were classifiable under Heading No. 98.01, for the auxiliary duty of customs, they were correctly classifiable under Chapter 84 and Chapter 85 of the Tariff. We have already referred to the Chapter Note 1 under Chapter 98 which provided that even when the goods were covered by any other specific heading in the Tariff if they satisfy with the condition prescribed in Chapter 98, they were to be classified under that Chapter 98. Once the goods had been classified under Heading No. 98.01, we consider that the classification could not be changed for the purpose of auxiliary duty of customs. Notification No. 187/86-Cus., dated 1-3-1986 had been issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Tariff, 1962 read with sub-clause (4) of Clause 49 of the Finance Bill, 1986 and provided exemption to the goods specified in Column (3) of the Table annexed to that Notification and falling within chapters of the Customs Tariff as specified in*

the corresponding entry in Column (2) of the said Table. A harmonious reading of the exemption Notification will show that both the conditions had to be satisfied before the benefit of this exemption notification was extended. As the goods had been classified under Chapter 98, they could not be brought back to Chapter 84 or 85 simply because a concessional rate of auxiliary duty had been provided therein. In this Notification, there is no reference to the goods falling under Chapter 98. We find that for the goods classifiable under Chapter 98 there is a specific exemption Notification No. 189/86-Cus., dated 1-3-1986 which provided that a concessional rate of auxiliary duty @ 25% ad valorem was applicable to the goods, among others classifiable under Heading No. 98.01. This Notification had been issued in exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Tariff, 1962 read with sub-clause (4) of Clause 49 of the Finance Bill, 1986. In this Notification, there is a specific reference to the goods classifiable under Chapter 98. As this is a specific Notification for the goods classifiable under Chapter 93 relating to the partial exemption from auxiliary duty and as in the Notification No. 187/85-Cus., there is no such reference to Chapter 98, we consider that the benefit of Notification No. 187/86-Cus. had been rightly denied in this case."

10. As per the decision of the Tribunal in the matter of **M/s Radha Rani (supra),** wherein it is held that; as per Chapter Note 1 to Customs Tariff Chapter 98, even when the goods were covered by any other specific heading in the Tariff, if they satisfy with the condition prescribed in Chapter 98, they were to be classified under that Chapter 98. Once the goods had been classified under Heading No. 98.01, we consider that the classification could not be changed for the purpose of auxiliary duty of customs. Further we find that the appellant has contended that where it is intended that the goods imported under project imports are classifiable under different chapters of the Customs

Tariff Act are not to be given the benefit of Project Import scheme the same is mentioned in the notification excluding the goods imported under project imports as is evidenced by Notification No. 5/2012-Cus (SG) dated 20.12.2012, whereas the department has denied the benefit of project imports in view of Notification No. 2/2014-Cus (SG) dated 13.08.2014, wherein for the impugned goods, which are classifiable under Chapter Heading 7304 no such specific exclusion is provided in the notification, when the goods are imported under project imports. Therefore we find that the impugned goods are classifiable under Customs Tariff Chapter Heading (CTH) 9801 and they are not covered by the Notification No. 2/2014-Cus (SG), hence not leviable to safeguard duty.

11. In view of the above discussion, the appeal is allowed with consequential relief, if any, as per law.

(Order Pronounced in Open court on 05.09.2024)

(P.A. Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

sasidhar