CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Customs Appeal No. 22550 of 2014
[Arising out of Order-in-Original No.BLR-CUSTM-000-COM-008-14-15 dated 12/06/2014 passed by Commissioner of Customs, Bangalore]

M/s. Interglobe Aviation Ltd ....**Appellant**
Level 3, Tower C, Global Business
Park, DLF City, Phase III
GURGAON
HARYANA
122002

VERSUS

C.C-The Principal Commissioner ....**Respondent**
Customs Bangalore
AIRPORT & AIR CARGO COMPLEX
COMMISSIONERATE, MENZIES
AVIATION BOBBA BUILDING,
DEVANAHALLI
BANGALORE
Karnataka
560300

APPEARANCE:

Shri Ravi Raghavan, Advocate for the Appellant
ShriK.B.Nanaiah, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER NO. 20644/2021

DATE OF HEARING: 29/01/2021
DATE OF DECISION: 26/07/2021

PER: P.ANJANI KUMAR

Briefly stated the facts of the case are that the appellants imported 'aircraft engine' along with 'engine stand' as 'parts of aircraft'; they filed Bills of Entry Nos 4894218 dated 12.10.2011, 6748060 dated 07.05.2012and 4894228 dated 12.10.2011, claiming exemption under Sl. No. 346D of Notification No. 21/2002-Cus., dated 01.03.2002 / Sl. No. 454 of Notification No. 12/2012-Cus., dated 17.03.2012, classifying the goods under CTH 8803 30 00 (Aircraft Engine along with Engine Stand -Parts of goods of heading 8801 or 8802: Other parts of aeroplanes or helicopters). Revenue was of the opinion that the correct classification would be CTH 8411 12 00 for Aircraft Engine (Turbo-jets, turbo-propellers and other gas turbines: Turbo-jets: Of thrust exceeding 25 KN) and CTH 7326 19 90 for Engine Stand (Other articles of iron or steel: Forged or stamped, but not further worked: Other: Other); the appellants are not eligible for the benefit of exemption under Notifications, No. 21/2002-Cus., dated 01.03.2002 or Notification No. 12/2012-Cus., dated 17.03.2012, as the imported goods are not classifiable as 'parts of aircraft' by virtue of exclusion under Section Note 2(e) to Section XVII which reads as follows:

> *"(2) the expressions "parts" and "parts and accessories" don not apply to the following articles, whether or not they are identifiable as for the goods of this Section: (e) machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483".*

2. Revenue also holds that the said notifications specifically exempt 'parts of aircraft'; and 'aircraft engines' being distinct goods, the exemption meant specifically in respect of 'parts of aircraft' cannot be extended to 'aircraft engines'; in cases where the legislature intends to exempt 'aircraft engines' from payment of duty, the relevant notifications / entries specifically cover 'aircraft engines' distinct from and in addition to the 'aircraft parts' or 'parts of aircraft'. Learned Commissioner also held that the appellants are not eligible to claim the alternate benefit of exemption under Notification No. 94/1996-Cus., dated 16.12.2006 it was not claimed at the time of import; and as the goods have not been examined by the department at the time of import to verify whether the imported goods were the same that were exported; the appellants had misdeclared that the goods are 'for repair' in the shipping bills and have not indicated that the goods are 're-imported' in the BOEs at the time of import.

2.1. A show Cause Notice dated 24.01.2014, invoking extended period, was issued and was confirmed by impugned order No BLR-CUSTM-000-COM-008-14-15 dated 03.06.2014 demanding differential duty of Rs 24,06,02,286/- under Section 28(4) of the Customs Act, 1962 along with interest; penalty of Rs Rs.24,06,02,286/- under Section 114A of the Customs Act, 1962 and a penalty of Rs 5,00,00,000/- under Section 114AA of the Customs Act, 1962. Hence, this appeal No C/22550/2014

2.2. Learned Counsel for the appellants submits that during the relevant period, the Appellant's aircraft's engines needed replacement after being grounded due to bird hits during operation; replacements that the appellants had at Delhi were sent to Bangalore by the Lufthansa cargo flights on Delhi-Frankfurt-Bengaluru route; the aircraft engines are tubular in shape and are required to be mounted on specifically made engine stands for storage/transportation. Learned Counsel traces different Notifications available during the relevant period along with conditions therein. Learned Counsel submits that the issue as to whether the aircraft engines and engine stands imported by the Appellants are entitled to exemption (in terms of Sl. No. 346D of Notification 21/2002-Cus dated 01.03.2002, as amended and Sl. No. 454 of Notification No. 12/2012-Cus dated 17.03.2012) stands clarified vide Board Circular D.O.F. No. 334/15/2014-TRU dated 10.07.2014 based on their Representation dated 22.04.2014to the Ministry of Finance; Representation dated 22.04.2014to the Ministry of Civil Aviation and a Petition to the Board (CBIC) dated 22.04.2014; CBEC vide Circular DOF No. 334/15/2014-TRU dated 10.07.2014 clarified that "aircraft engines and parts thereof" are eligible for customs duty exemption under Sl. No. 454 of Notification No.12/2012-Cus., dated 17.03.2012 when imported for servicing, repair or maintenance of aircrafts used for scheduled operations subject to fulfillment of conditions specified therein.

3. Learned Counsel submits that it was never their intention to export the aircraft engine and the stand to any foreign territory, as the replacement aircraft engine along with the stand were readily available at Delhi; the airway bill, export invoices and shipping bills filed by Appellants with the

Delhi Customs clearly mention the consignee as "Inter Globe Aviation Limited, Engineering Department, Bangalore International Airport Ltd. (BIAL), Devanahalli - 560 300, Bangalore, Karnataka, India; *t*he exported goods were never imported into Germany as it never crossed the Customs Frontiers in Germany; no Bills of Entry were ever filed with the Frankfurt Customs authorities in Germany; therefore, the goods cannot be said to have been exported from India in the first place and accordingly, cannot be said to be re-imported to India.

4. Learned Counsel submits that the aircraft engine and the engine stand are "parts of aircraft of heading 8802"; they have satisfied all the conditions for availing the benefit of the exemption notification; it is not disputed that the aircrafts of the Appellants fall under the CTH 8802 and that the aircraft engine and the engine stand have been imported into India for service/repair/maintenance of the unserviceable aircrafts of the Appellant grounded at Bengaluru airport. He submits that the aircraft engines imported by the Appellants are undoubtedly parts of aircraft of heading 8802 and are exempt under the above exemption notifications. He submits that the expression 'parts of aircraft' shall be given its plain and clear meaning and shall be construed to include aircraft engine also; the above clarification issued in the context of Sl. No. 454 of Notification No.12/2012-Cus., dated 17.03.2012, is equally applicable to identically worded exemptions under Sl. No. 346D of Notification No.21/2002-Cus dated 01.03.2002, Sl. No. 303 of Notification No. 12/2012-CX dated 17.03.2012 and Sl. No. 54B of Notification No. 21/2002-Cus dated 01.03.2002; the scope of the expression 'parts of aircraft'/ 'aircraft parts' and entitlement to exemption for 'parts' is settled in favour of the Appellants by a plethora of decisions; he places reliance on the following.

- *Indian Airlines LtdVs Collector of Customs, 1988 (38) ELT 679 (Tri - LB)*
- *High Energy Batteries (I) Ltd Vs Commissioner of Central Excise, Trichy, 2002 (142) ELT 266 (Tri - Chennai)*
- *New Holland Tractors (India) Pvt Ltd. v. CCE, Noida, 2010 (253) E.L.T. 249 (Tri. - Del.)*

4.1. He submits that the term 'parts of aircrafts' appearing under Sl. No. 454 of the Notification No. 12/2012-Cus., dated 17.03.2012 has been defined to include 'aircraft engine' and 'engine parts' within the said notification itself. The term 'parts' has been defined in an inclusive way in the Explanation appearing under Condition appended to Sl. No. 446 of the said exemption notification. Sl. No. 446 exempts 'parts of gliders or simulators of aircrafts' with a condition at No. 71; condition No. 71 provides that 'If the parts are required for manufacture or servicing of aero planes, gliders, helicopters or simulators of aircraft'. Explanation to Condition No. 71 provides that "Parts of aero planes, gliders, helicopters or simulators of aircraft" shall include engines, engine parts, wireless transmission apparatus, wireless receivers, iron and steel washers and screws, ball and roller bearings and other parts."

4.2. He submits that engine stands imported by the Appellants along with the engines are integral part of the aircraft engine as the engine cannot be transported/ stored without the engine stand; the engines stands are commercially known and sold in the market as parts of aircrafts as they have been designed for use solely and principally with the aircraft engines; hence, they qualify to be parts of aircrafts.

4.3. He submits that the department's reliance placed on the Section Note 2(e) and the HSN Explanatory Notes is untenable; Chapter 88 falls under Section XVII of the Customs Tariff. Section Note 2(e) to Section XVII provides as under:

> *'2. The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as the goods of this Section:*
>
> *....*
>
> *(e) Machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 or 8482 or, provided they constitute integral parts of engines or motors, articles of heading 8483.'*

4.4. He submits that Section Note provides that if any article is specifically covered under the CTH 8401 to 8479 and simultaneously is also covered under any of the CTH of Section XVII as parts/accessories of any of the goods of that Section, then for the purposes of classification it will be classified under the CTH 8401 to 8479 and not under Section XVII of the Customs Tariff. HSN Explanatory Note to CTH 8803 reads as under:

> *"This note excludes the **following parts and accessories**, whether or not they are identifiable as articles of this section:*
>
> *...*

(5) Machines and mechanical appliances, and parts thereof, of heading 8401 to 8479, for example:

...

(d) Engines of all kinds including engines fitted with gear boxes and parts thereof, falling in headings 8407 to 84.12."

4.5. He submits that the above HSN Explanatory Note also makes it clear that machines/appliances of CTH 8401 to 8479 will not be classified under CTH 8803, even if otherwise they are in the nature of 'parts of aircrafts'; it is important to note that the phrase used in the above HSN Explanatory Note is *'following parts and accessories'* which clearly implies that the articles mentioned thereafter are essentially parts and accessories of goods of Section XVII. Clause 5(d) above specifically provides for engines of CTH 8407 to 8412; the Section Note and the HSN Explanatory Note do not provide that the said articles, merely because they are classified under CTH 8401 to 8479, cease to be 'parts' or 'parts and accessories' of goods of Section XVII; in other words, they remain to be parts of articles of Section XVII, irrespective of their classification under any chapter of the Customs Tariff; the impugned order mainly relies on the Section Note 2(e) of Section XVII and HSN Explanatory Note for putting forth the argument that the exemption is not available to the Appellants as the engine and the engine stand are not classifiable under CTH 8803 of the Customs Tariff as 'parts of aircrafts.'

4.6. He submits that where a Notification grants exemption with reference to an item in the First Schedule to Customs Tariff Act, 1975, the Interpretative Rules to the Tariff are applicable and the terms used in the Notification shall be understood by applying the applicable Section Notes and Chapter Notes; however, if exemption is extended without referring to the tariff heading, then exemption would be available even though for purposes of classification it may be considered to be something else; relevant Sl. No. 346D of Notification No. 21/2002-Cus., dated 01.03.2002 or Sl. No. 454 of Notification No. 12/2012-Cus., dated 17.03.2012 provides exemption to *'parts of aircraft of heading 8802'* which are classifiable under *'Any Chapter'*; if an exemption is extended in a notification without referring to the tariff heading of the Customs Tariff, then such exemption shall be available to the assessee even though for purposes of classification, it may be considered to be something else under the Customs Tariff. In this regard, reliance is placed on –

- *CC, Bangalore Vs Maestro Motors Ltd., 2004 (174) ELT 289 (SC)*
- *CCE, Jaipur v. MewarBartanNirmanUdyog, 2008 (231) ELT 27 (SC)*

4.7. He submits that in the matter of *Jasu Shipping Company Pvt. Ltd. v. CC (Import) Mumbai, 2018 (362) ELT 900 (Tri - Mumbai)*, Hon'ble Tribunal has held that when the parts are, admittedly, not classifiable in the same chapter as the main goods and the exemption notification is not related to the heading for 'dredger', reliance on the exclusion in the notes to the Section, which is intended for the sole purpose of classification, to interpret an exemption notification is not legal and proper; the description in the exemption notification must be read in its entirety and harmoniously in accordance with which, all parts of dredgers, including engines, must be accorded the benefit of exemption.

5. Learned Counsel submits that effect must be given to the plain and clear meaning of the language used in an exemption notification; when the language used in an exemption notification is unambiguous, full effect must be given to it and the benefit of exemption cannot be denied by placing reliance on classification; appellants rely on –

- *CC (Import), Mumbai Vs Dilip Kumar & Company, 2018 (361) ELT 577 (SC)*
- *HemrajGordhandas v. H.H. Dave, ACCE&C, Surat, 1978 (2) ELT J 350 (SC)*

6. Learned Counsel submits that without prejudice to the above, the Appellants are eligible for exemption under Notification No. 94/1994-Cus dated 16.12.1996, as amended, in terms of Sl. No. 3 thereof which grants full exemption from levy of BCD and CVD to goods re-imported into India after being exported, subject to conditions specified therein; the fact of export and re-import are known to the Customs as the Shipping bills and Bills of Entry are Customs documents which are available with the Customs for verification; export invoices submitted to Customs along with the Shipping Bills in October, 2011 and May, 2012 mentions the Appellants as the consignee of the goods with the Bengaluru International Airport as the final destination of goods; the Appellants had further taken the approval for GR waiver on both occasions as no remittances were involved; mentioned GR waiver in the shipping bills filed on both occasions; GR waiver letter dated 03.05.2012 written by the Appellant's bank to the Customs clearly state the fact that the aircraft engine is being exported for final re-import at Bengaluru Airport; the fact of re-import was declared and known to Customs; he places a table showing the description of the exported goods in the shipping bills and export invoices and description of the re-imported goods in the Bills of entry.

7. He submits that it is a settled law that the benefit of a Notification can be claimed at a later stage even if the said benefit has not been claimed at the assessment stage under the Bills of Entry; he relies on the Apex Court decision in the matter of *Share Medical Care Vs UOI 2007 (209) ELT 321 (SC)*. He submits in the case of *Mohit Overseas Vs Commissioner of Customs, 2016 (335) E.L.T. 18 (Del)*, the Hon'ble High Court has held the petitioner could avail the provisions of Section 149 of the Customs Act, 1962 based on documents which existed at the time of clearance of imported goods for availing the benefit of the exemption notification which was in existence at the time of import of goods.

8. Learned Counsel submits that the impugned BOEs in the present case have been finally assessed at the time of import and such assessment has not been challenged by the department; hence the assessment attained finality and cannot be reopened by the impugned order; he relies upon Hon'ble Supreme Court in the case of *ITC Ltd Vs CCE, Kolkata-IV, 2019 (368) ELT 216 (SC)* wherein it was held that the sign/endorsement made on the bill of entry is an order of assessment under Section 17 which is an appealable order and any person including the departmental authorities who are aggrieved by order of self-assessment should challenge the assessment by way of filing an appeal against such self-assessment under Section 128 of the Customs Act, 1962.

9. Learned Counsel submits that the Appellant has not suppressed or mis-represented facts to the Customs authorities with a view to evade payment of duty; the Appellant had correctly described the imported goods as 'aircraft engine' and 'engine stand' along with the details of the Engine No. in the bills of entry filed for the imported goods; the mere fact that the Appellants claimed exemption available to 'parts of aircraft' cannot amount to misstatement or misdeclaration with an intent to evade duty as the imported goods are in fact parts of aircrafts, irrespective of their classification under the Customs Tariff does not show intent to evade duty. He relies on Northern *Plastic Ltd Vs CCE 1998 (101) ELT 549 (SC) and Densons Pultretaknik Vs CCE2003 (155) ELT 211 (SC*) and submits that even if the engine and the engine stand imported by the Appellants are held to be wrongly classified under CTH 8803, it cannot amount to mis-declaration under the Customs Act; it is settled that law in a dispute prevailing around classification, the assessee cannot be charged with any suppression of facts. He relies upon *CCE Vs Ishaan Research Lab (P) Ltd, 2008 (230) ELT 7 (SC)* and *Chamundi Die Cast (P) Ltd Vs CCE, 2007 (215) ELT 169 (SC)* and submits that the entire demand is time barred.

10. Learned Counsel also submits that the imported goods are not liable for confiscation; mere claiming an exemption or classification under particular heading on the basis of *bona fide* belief does not amount to the mis-declaration of value or any other particular rendering the imported goods liable for confiscation under Section 111(m). He relies upon

- *Bussa Overseas & Properties P Ltd Vs C.L. Mahar, ACC Bombay, 2004 (163) ELT 304 (Bom.),*
- *Commissioner of Customs, Amritsar Vs Raja Impex (P) Ltd., 2008 (229) ELT 185 (P&H)*
- *CC (Import) v. Shiv KripaIspat Pvt. Ltd., 2015 (318) E.L.T. A259 (Bom.)*

11. Learned Counsel further submits that interest not payable and penalty not imposable when the demand of duty is not legally tenable, the demand of interest under Section 28AA of the Customs Act, 1962 cannot sustain; ahe Apex Court in the matter of Pratibha Processors Vs UOI 1996 (88) ELT 12 (SC) has held that when the principal amount (duty) is not payable due to exemption, there is no occasion or basis to levy any interest, either; no penalty is imposable on an assessee when the issue involved is *bona fide* interpretation of terms of an exemption notification. He placed Reliance on

- *CCE Vs HMM Limited, 1995 (76) ELT 497 (SC)*
- *CCE, Aurangabad VSBalakrishna Industries, 2006 (201) ELT 325 (SC)*

12. He further submits that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally; the present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962.

13. Learned Authorised Representative, appearing for the Revenue reiterates the findings of the OIO.

14. Heard both sides and perused the records of the case. We find that the issues that require consideration in the appeal are as to

(a). Whether the goods are to be treated as imported into the country or shifted from Delhi to Bangalore as claimed by the appellants?. If so, whether they are eligible for the benefit of notification no. 94/96- Cus dated 16.12.1996?

(b). Whether the impugned goods be treated as 'parts of aircraft' and whether the appellants claim of benefit of exemption under notification no. 21/2002-Cus dated 01.03.2002(S1.No.346D) and notification No. 12/2012-cus dated 17.03. 2012 (SI. No. 354) is proper?

(c).Whether the demand can be sustained without reviewing/challenging the. assessment in the Bills of Entry?

(d). Whether in the facts and circumstances of the case, invocation of extended period of limitation and imposition of penalties under Sections 112, 114A and 114AA of the Customs Act, 1962, justified?

15. Coming to the first issue of whether or not there is a reimport of the impugned goods, it is the submission of the appellants that the documents filed at New Delhi clearly indicated that the goods are being shipped to Bangalore; as there was no direct cargo flight from Delhi to Bangalore, the goods were loaded on aircraft which touched Germany in between; no import documents were filed at Germany and the goods did not enter the German Customs Area; the identity of the goods can be established by the engine on the chassis numbers. On the other hand, the ld. Adjudicating authority takes recourse to the definition u/s 2(18) and 2(23) of Customs Act, 1962 holds that there is no dispute that the impugned goods were first taken out of India and then brought into India and therefore, the contentions of the appellant are misplaced. The adjudicating authority further holds that in terms of Section 20 of the Customs Act, 1962, goods re-imported into India for any purpose need to be treated as import of goods for the purposes of levy of customs duty. He also finds that the benefit of notification 94/96 dated 16.12.1996 is not available to the appellants as the at the time of export of goods, intention to re-import was not declared and the impugned goods were not subjected to examination by the competent authority and therefore, the claim of re-import and consequential benefit under notification 94/96 cannot be entertained. The adjudicating authority finds that the shipping bills filed at Delhi indicated that the impugned goods were being exported for repairs and maintenance; it certainly gives an understanding that the impugned goods were to be repaired abroad; intention of re-import was not indicated and marks and numbers were not verified by proper officers. Under the circumstances, we find that the argument taken by the appellants does not stand the scrutiny of law. In order to avail the benefit under any notification, the appellants are required to establish the *bona fides* by following the proper procedure; there was no reason as to why the goods were not declared to be for re-import purposes at the time of loading in Delhi; the appellants would have given proper intimation/declaration to the department so that the department could have carried out the necessary examination/investigation. The facts of the case do clearly indicate that the appellants have filed a shipping bill while loading the goods at Delhi; at the time of movement from Germany to Bangalore and have also filed a bill of entry at Bangalore without making any reference to the intent of re-import etc. Therefore, we find that it is not open to the appellants to claim the same as an after-thought. In view of the same, we have no hesitation whatsoever to hold that the impugned goods are not eligible for exemption contained in terms of notification 94/96.

16. Coming to the second issue as to whether the appellants can claim benefit of exemption under notifications 21/2002 Cus dated 01.03.2002 and notification no. 12/2012-Cus dated 17.03.2012, we find that the case of the department is that the impugned goods are not classifiable as "parts of aircraft" by virtue of exclusion under Section note 2(e) to Section XVII; the notifications exempt only "parts of aircrafts" and aircraft engines being distinct goods cannot be equated as parts of aircraft to be eligible for the benefit of the notification. On the contrary, the argument on the part of the appellant is that the relevant notifications do not restrict the exemption depending on the classification; whatever be the classification, the exemption notification is applicable. They also contend that CBEC vide circular DOF 334/15/2014-TRU dated 10.07.2014 clarified that "aircraft engines and parts thereof" are eligible for customs duty exemption when imported for servicing repair, or maintenance of aircraft used for scheduled operation subject to fulfillment of conditions specified therein. The appellants further relied on the cases cited above and submit that the scope of the expression "parts of aircraft/ aircraft parts" and their entitlement to exemption for "parts" is settled in their favour.

16.1. The appellants further submit that HSN Explanatory Note also makes it clear that machines/appliances of CTH 8401 to 8479 will not be classified under CTH 8803, even if otherwise they are in the nature of 'parts of aircrafts'; it is important to note that the phrase used in the above HSN Explanatory Note is *'following parts and accessories'* which clearly implies that the articles mentioned thereafter are essentially parts and accessories of goods of Section XVII. Clause 5(d) above specifically provides for engines of CTH 8407 to 8412; Section Note and the HSN Explanatory Note do not provide that the said articles, merely because they are classified under CTH 8401 to 8479, cease to be 'parts' or 'parts and accessories' of goods of Section XVII; they remain to be parts of articles of Section XVII, irrespective of their classification under any chapter of the Customs Tariff.

16.2. The Appellants submit that where a Notification grants exemption with reference to an item in the First Schedule to Customs Tariff Act, 1975, the Interpretative Rules to the Tariff are applicable and the terms used in the Notification shall be understood by applying the applicable Section Notes and Chapter Notes; however, if exemption is extended without referring to the tariff heading, then exemption would be available even though for purposes of classification it may be considered to be something else; the relevant Sl. No. 346D of Notification No. 21/2002-Cus., dated 01.03.2002 or Sl. No. 454 of Notification No. 12/2012-Cus., dated 17.03.2012 provides exemption to *'parts of aircraft of heading 8802'* which are classifiable under *'Any Chapter'*.

17. On the other hand Learned Commissioner says that the stand of the department is that the relevant notifications specifically exempt 'parts of aircraft' and the 'aircraft engines' being distinct goods; exemption meant specifically in respect of 'parts of aircrafts' cannot be extended to 'aircraft engines'; he relies upon Hon'ble Supreme Court's decision in the case of Maestro Motors 2004(174) ELT 289(SC)), wherein it was held that the goods must be classified in the same manner both for purposes of payment of customs duty as well as for the purposes of exemption/benefit under that Notification and that the if the wording of notification shows that an item is specifically exempted then exemption will apply. He finds that in the instant case, the goods imported are neither classifiable as parts (by virtue of exclusion under Section Note 2(e)) nor are 'specifically exempt by the said notification; thus, there is no conflict between the stand taken by the department and the law laid down by the Hon'ble Supreme Court. He further finds that there is a legislative history of treating 'aircraft engines' as distinct from 'parts of aircraft' for the purpose of exemption unlike in the case of aero plane Tyres; in the notifications, either the 'aircraft engines' are specifically included (as in the case of Entry 10(i) of the Notification No. 39/1996 Cus dated 23.7.1996 and entry 1 of Notification No. 206/1976-Cus) or by way of an Explanation (as in the case of the Notification No.12/2012 dated 17.3.2012) and the same is absent in subsequent Notifications; the legislative intent is clear as the Notifications in question, continue to distinguish 'aircraft engines' from the 'parts of aircraft'.

17.1. Learned Commissioner further finds that the appellants rely upon the explanation provided under Condition No.71 relevant for Sl. No. No. 446 of Notification No. 21/2002-Cus., dated 01.03.2002 by virtue of which the scope of the term 'parts of aircraft' has been explained to, inter alia, include 'aircraft engines'; the appellants wrongly contend that benefit under Sl. No. 454 wherein no such Explanation is available; appellants contend that the scope of Explanation under condition 71 (for Entry 446) has not been limited to Entry 446 alone as in the case of explanation under Condition 77 (for entry No. 453); hence, the Explanation under condition 71 can be used to interpret Entry 454 as well. Learned Commissioner finds that exemption notifications have to be strictly construed as held by Hon'ble Apex Court in the case of Saraswathi Sugar Mills Vs CCE, Delhi-III 2011(270)ELT 465(SC);

17.2. The Notification has an explanation below condition 71 for Entry 446; if this Explanation was to be also used to interpret Entry 454, it would tantamount to adding the same below Condition 21 relevant to Entry 454 in order to extend the benefit to the noticee, which is not permissible as per law laid down in Saraswati Sugar Mills (supra); entry 446 reads as "parts of gliders or simulators of aircrafts (excluding rubber tyres and tubes of gliders)" whereas Entry 454 reads as "parts (other than rubber tubes) of aircraft of heading 8802"; on a plain reading, it is clear that the scope of both entries is very different; explanation clarifying one Entry cannot be used to clarify scope of another Entry; scope of explanations under condition 71 is different from that of under condition 21 (for Entry 454); explanation under condition 21 reads as.- the expressions "scheduled air transport services' and "scheduled air cargo service" shall have the meaning respectively assigned to them in Condition 73; Learned commissioner finds that if the contention of the noticee is to be accepted, there was no need for Explanation below Condition 21 as the Explanation 1 below Condition 71 would have sufficed; if the notification chose to borrow the scope of expression "parts of aircraft" from explanation below Condition 71, it would have mentioned clearly so; in view of the above, the appellants contention is not acceptable.

17.3. We find that the learned commissioner has denied the reliance by appellants on Board's Circular No. 839/16/2006-CX dated 16.11.2006, stating that the clarification was issued in respect of IC Engines used within the factory of production for manufacture of tractors and as such not applicable for the facts of impugned case. We also find that the adjudicating authority has analyzed and correctly examined the case laws submitted by the appellants and rightly held them to be inapplicable to the facts of the case. We find that as per the discussion above, the learned commissioner has correctly held that the impugned goods i.e. 'aircraft engines' and 'engine stands' are not eligible for the benefit of Customs Notifications No.21/2002-Cus dated 01.03.2002 (Sl. No.346D) and No.12/2012 dated 17.3.2012 (Sl. No.454) and Central Excise Notifications No.6/2006-CE dated 01.03.2006 (Sl. No.545) and Notification No.12/2012-CE dated 17.3.2012 (Sl.No.303) and Notifications No. 20/2006-Cus dated 1.3.2006 (Sl. No.1) and 21/2012-

Cus dated 17.3.2012 (Sl. No.1) for the purposes of SAD.

17.4. We also find that the appellants have relied upon Circular bearing D.O.F. No. 334/15/2014-TRU dated 10.07.2014 which clarified that "aircraft engines and parts thereof" are eligible for customs duty exemption under Sl. No. 454 of Notification No.12/2012-Cus, dated 17.03.2012 when imported for servicing, repair or maintenance of aircrafts used for scheduled operations subject to fulfillment of conditions specified therein. However, we find that the clarifications given under Annexure-III Customs states that Representations have been received regarding the eligibility of aircraft engines and parts thereof for customs duty exemption under Sl.No.454 of notification No.12/2012-Customs, dated 17th March, 2012. It is clarified that aircraft engines and parts thereof are eligible for customs duty exemption when imported for servicing, repair or maintenance of aircrafts used for scheduled operations subject to fulfillment of conditions specified therein. We find that there is no mention either in the notification or in the clarification that it will be effective retrospectively. In the absence of the same, it is to be understood that the changes made in the Notification No.12/2012-Customs dated 17th March, 2012 would only be prospective. Therefore, we are not inclined to accept that the above Circular issued by CBEC would be of any help to the cause of the appellants.

18. Coming to the issue as to whether the issuance of notice under section 28 of Customs Act, 1962 was correct as no appeals have been filed against the assessed bills of entry, we find that the appellants placed reliance on the decision of Hon'ble Supreme Court in the case of ITC Ltd Vs Commissioner of Central Excise, Kolkata IV, 2019 (368) ELT 216 (SC) wherein it was held that the sign/endorsement made on the bill of entry is an order of assessment under Section 17 which is an appealable order and any person including the departmental authorities who are aggrieved by order of self-assessment should challenge the assessment by way of filing an appeal against such self-assessment under Section 128 of the Customs Act, 1962; they submit that in the absence of any appeal against the Out of Charge orders for clearance of goods or the Bills of Entry passed by the proper officers of Customs, the said orders of assessment and clearance have attained finality and the same cannot be challenged or negated by issuance of the impugned order.

18.1. Learned Commissioner, on the other hand, finds that the case laws submitted by the appellants pertained to the era where goods were assessed duty by the officers whereas in the present case, the goods have been cleared on self-assessment basis. We find that the appellants have relied upon the recent decision of Hon'ble Supreme Court in the case of *ITC Ltd. Vs CCE, Kolkata-IV, 2019 (368) ELT 216(SC).* We find that the issue for consideration before Apex Court was about refund and in this context, Hon'ble Apex Court has observed that in terms of the provisions of Section 27 read with Section 17 of the Customs Act, 1962, no refund claim is maintainable unless the order of assessment is challenged. The Hon'ble Supreme Court observes that:

> *47. When we consider the overall effect of the provisions prior to amendment and post-amendment under Finance Act, 2011, we are of the opinion that the claim for refund cannot be entertained unless the order of assessment or self-assessment is modified in accordance with law by taking recourse to the appropriate proceedings and it would not be within the ken of Section 27 to set aside the order of self-assessment and reassess the duty for making refund; and in case any person is aggrieved by any order which would include self-assessment, he has to get the order modified under Section 128 or under other relevant provisions of the Act.*

18.2. On going through the above cited case, we find that the issue which was considered by the Hon'ble Apex Court was not "Demand" issued under Section 28 but "Refund" under Section 27. We find that the Apex Court has not, anywhere in the order, observed that for issuing a demand under Section 28, the assessment order needs to be challenged under the provisions of Section 128. We cannot read such a conclusion from the judgment. Therefore, we find that in view of the provisions of Section 17 and Section 28 of the Customs Act, 1962, the demand issued is in order. We find that learned Commissioner has rightly relied upon the order of Hon'ble *Madras High Court, 2006 (199) ELT 405.*

19. Coming to the issue of limitation the appellants argue that they have not suppressed or misrepresented facts to the Customs authorities with an intent to evade payment of duty; bills of entry, invoice etc filed at the time of import, the goods were correctly described as 'aircraft engine' and 'engine stand' along with the details; mere fact that the Appellants claimed exemption available to 'parts of aircraft' cannot amount to misstatement or mis-declaration with an intent to evade duty; the imported goods are in fact parts of aircrafts, irrespective of their classification under the Customs Tariff; mere claiming an exemption or classification under particular heading on the basis of *bona fide* belief does not amount to the mis-declaration as held in Northern Plastic Ltd Vs CCCE 1998 (101) ELT 549 (SC); wrong classification cannot be reason to allege mis-declaration as held in.

- *CCE Vs Ishaan Research Lab (P) Ltd, 2008 (230) ELT 7 (SC)*
- *Chamundi Die Cast (P) Ltd Vs CCE, 2007 (215) ELT 169 (SC)*
- *Densons Pultretaknik Vs CCE reported in 2003 (155) ELT 211 (SC)*

19.1. On the other hand, the learned Commissioner finds that the importer has declared the goods as 'aircraft engine' and 'aircraft engine stand' and simultaneously claimed the CTH relevant for 'parts of aircraft' in the respective Bills of Entry; further, the benefit of Notification No. 21/2002-Cus dated 1.3.2002 (Sl. No. 346D) and Notification No. 12/2012-Cus dated 17.03.2012 (Sl. No. 454) has been claimed as 'parts of aircraft'; the Bills of Entry were self-assessed by the noticee and cleared without payment of duty; both the Bills of Entry were facilitated through RMS; the scheme of facilitation of Bills of through RMS is pegged in the concept of trust in the importer; the appellants, on the one hand, claimed that the shipping bills declared that aircraft engines were being re-exported for repair and also the claim that the said goods never crossed customs boundaries in Germany.

19.2. Learned Commissioner observes that the scheme of self- assessment places greater responsibility on the importer in as much as departmental intervention being minimal, the importer is required to make declarations and claim benefits with extra caution; it is also not open to the importer to subsequently shirk the responsibility for their declarations and claims. Were it not to be so, the departmental officers would still be responsible for assessment when they had factually no role to play in it a position which would be completely unfair and unjust and as such cannot be contemplated in law; in the above factual matrix and background, it is apparent that the importer noticee has made mis-declaration at various stages, claimed incorrect exemption and cleared the goods without payment of duty; the documentation prepared in dubious and doubtful. Therefore, this is a fit case for invocation of extended period of limitation.

19.3. We find that the bills of entry were self-assessed and were cleared under RMS. Under the circumstances, it cannot be alleged that the Department was in the knowledge of the various declarations made by the appellants and thus, charge of mis-declaration cannot be levelled. Looking into the facts and circumstances of the case, we find that the appellants have mis-declared the impugned goods and have wrongly availed the benefit of exemption which is not due to them. Under the circumstances, we find that extended period is correctly invoked.

20. Coming to the various penalties imposed, the appellants submit that when the demand is not tenable interest under Section 28AA of the Customs Act is not imposable as per Apex Court judgment in the case of *Pratibha Processors Vs UOI, 1996 (88) ELT 12*. We find that in the instant case as the duty is held to be payable interest follows consequentially. The appellants also pleaded that no penalty is imposable when the issue involved is a bona fide interpretation of terms of exemption notification as held in *Collector of Central Excise Vs H.M.M. Limited, 1995 (76) ELT 497 (SC)* and *CCE, Aurangabad Vs Balakrishna Industries, 2006 (201) ELT 325 (SC).* However, we find that the appellants have been giving various declarations about the impugned goods while making export from Delhi and while importing at Bangalore. Only after the issue of notification, they have raised the issue of interpretation of notification. Therefore, we find that the appellant's contention is not valid. The appellants also contended that the penalty under the Section 114AA can be imposed when the goods have been exported by forging the documents knowingly or intentionally. The present case does not relate to export at all and even for imports, all the documents presented for imports were genuine and not forged and thus penalty is not imposable under Section 114AA of the Customs Act, 1962. We find that there is merit in the argument of the appellants. As the case is not of export, we find that no penalty under Section 114AA of the Customs Act, 1962 is imposable. The appellants have also relied upon the case of *Bussa Overseas & Properties P. Ltd. Vs C.L. Mahar, Assistant Commissioner of Customs, Bombay, 2004 (163) ELT 304 (Bom)* and submitted that goods already cleared cannot be held to be confiscated. We uphold the view. However, we find that the Adjudicating Authority simply held that the goods are liable for confiscation; he did not confiscate the goods and he did not impose any fine in lieu of confiscation. Therefore, we find that the order of mere holding the goods liable for confiscation is of no consequence, need not be interfered with.

21. In view of the above, the appeal is partly allowed in the above terms i.e. by setting aside the penalty imposed under section 114AA of the Customs Act, 1962, while upholding the other conclusions.

(Order pronounced in the open court on 26/07/2021)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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