IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

Appeal No. C/00358/2011

(Arising out of Order-in-Appeal C. Cus. No. 533/2011 dated 23.08.2011 passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs (Imports), Chennai : Appellant

Vs.

M/s. Bharat Heavy Electricals Ltd. : Respondent

Appearance:-

Shri Arjun Raghavendra, DC (AR)
for the Appellant

Ms. Cynduja Crishnan, Advocate
for the Respondent

CORAM:

Hon'ble Shri V. Padmanabhan, Member (Technical)
Hon'ble Shri P Dinesha, Member (Judicial)

Date of Hearing/Decision:**28.05.2018**

Date of Pronouncement: **20.09.2018**

Final Order No. *42513 / 2018*

Per Shri P. Dinesha,

This appeal is by the Revenue wherein it has challenged the classification of the goods imported by the assessee.

1. The assessee filed an application for Registration of a Contract under 'Project Import' for online self clearing filters for drinking water as an 'Initial Setup'. The Revenue was of the view that the proposed import was only a "filter" for purification of water, which was not meant for initial setting up of a "unit" or for the substantial expansion of the existing unit as per the Tariff Entry. The Revenue was of the further view that the proposed import being a single/composite machine for the purpose of purification of water, could not be classified as a "project" under Customs Tariff Heading 9801. On being put on notice in the above lines, the assessee filed a detailed reply explaining the functional details of the goods proposed to be imported. The assessee also relied on the Board's Circular T.R.U. No. 659/50/2002-Cx. dt. 06.09.2002 to the effect that a water treatment plant would include plants for purification of water or for similar process intended to make the water fit for consumption by humans or animals. Not convinced by the explanation as also the functional details furnished by the assessee, the Deputy Commissioner vide Order in Original dt. 08.10.2009 rejected the application filed by the assessee for registration of the aforesaid contract. Aggrieved by the rejection order, the assessee preferred an appeal before the Commissioner of Customs (Appeals)

Chennai. The learned Commissioner vide Order-in-Appeal dt. 23.08.2011 set aside the order of the lower authority thereby allowing the appeal directing granting of Registration as sought. The findings of the learned Commissioner (Appeals) are that there were different entries in the Customs Tariff Heading 9801 for industrial plant and others while CTH 9801 00 11 is meant for industrial plant project, 9801 00 12, 9801 00 13, 9801 00 14 and 9801 00 15 are for irrigational plant power project, mining project and project for exploration of oil or other minerals and, therefore, he holds that the lower authority's findings were not correct. The Revenue is therefore before the Tribunal.

2. When the matter came up before us, Shri Arjun Raghavendra appeared for the appellant/Revenue and Ms. Cynduja Crishnan appeared for the respondent/ assessee. It is the contention of the appellant/Revenue that the assessee imported only filter which was used for purification of water which was meant for setting up or expansion of a unit. Further, it is the case of the Revenue that as per Regulation 3(a)(ii) of the Project Import Regulation, 1986, a single machinery or composite machinery will not constitute a unit or project and, therefore, the proposed import being a single/composite of machines for the purposes of purification of water, cannot be

classified as a project under Customs Tariff Heading 9801. It is his further contention that where a machine consists of individual components, whether separate or interconnected, intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, then, the whole falls to be classified under the heading appropriate to that function. As regards the reference of the Commissioner on Board Circular No. 659 (*supra*), the Ld. DR contended that the concession would be available regardless of whether a full plant is imported or some machinery imported which is intended for initial setup of the project and, therefore, the import, as in the case, being a single machine, is not sufficient to be considered as an initial setup.

3. *Per contra*, learned Advocate Ms. Cynduja Crishnan supported the findings of the Commissioner (Appeals). It was further contended by her that the drinking water supply project would even cover purification plant which was wrongly classified as an industrial plant. It was her further case that the plant in question could never be an industrial plant, which fact stands supported by this authority for drinking water supply project, i.e. the District Collector and not the Ministry concerned. It was further contended that the Deputy Commissioner did not appreciate as to how the

plant imported in CKD/SKD condition was drinking water purification plant for their staff and that the word "unit" explained in Regulation 3(d) was for any self-contained portion. The water purification system itself was to be considered as a drinking water supply project and, therefore, what was proposed to be imported would be covered under the definition of "unit" and since the subject goods imported were going to be utilized for the first time, the setting up of the same was, therefore, an initial setup.

4. We have considered the rival submissions and we have also gone through the documentary evidences furnished before us. We find that the observations of the learned Commissioner (Appeals) is apt and is also in tune with the CBEC Circular No. 659 (*supra*). We find that the water purification system itself could ideally be considered as a unit as explained in Regulation 3(d). Further, we also find that the Circular No. 659 (*supra*) also supports the contentions of the assessee by which the water treatment projects would get exempted. The assessee having satisfied the conditions of the said Circular, the Commissioner (Appeals) has rightly extended the benefit of the Circular to the assessee. We, therefore, fully endorse the reasoning/finding of the learned Commissioner (Appeals) in this regard. The ultimate object of the Circular to

extend exemption from Central Excise is in respect of water treatment projects for supply of drinking water for human and animal consumption, which fact remains unchallenged or uncontroverted by the Revenue and rightly so because, the water is ultimately used for human consumption.

5. In the light of the above, we find no reason to disturb the findings of the learned Commissioner (Appeals) and, therefore, dismiss the appeal.

(Pronounced in open court on **20.09.2018**)

(P Dinesha)	**(V. Padmanabhan)**
Member (Judicial)	Member (Technical)

Sdd