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

C/CO/10/2009 and C/31/2009

(Arising out of Order-in-Appeal C. Cus. No.438/2008 dated 14.11.2008 passed by the Commissioner of Customs (Appeals), Chennai)

Commissioner of Customs, Chennai — Appellant

Vs.

M/s. NAPC Ltd. — Respondent

Appearance

Shri B. Balamurugan, AC (AR) for the Appellant
Shri P.Shridhar, consultant for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **10.08.2017**

Final Order No. 41648/2017

Per Bench

The above appeal is filed by the department aggrieved by the order passed by the Commissioner (Appeals) who held that the respondents are eligible for benefit of Notification No. 21/2002.

2. Brief facts of the case are that the respondents imported 'SPECO Asphalt Mixing Plant Model: TSAP 2000FFW capacity 160 Tons per hour' from Korea vide Bill of Entry dated 23.9.2008 claiming exemption from BCD and CVD in terms of

Sl. No. 230, List 18 Sl. No. 1 of Notification No. 21/2002-Cus. dated 1.3.2002. The original authority observed that the catalogue from the supplier did not have any indication that the mixing plant is with the bag type filters and therefore held that the conditions of the notification are not fulfilled for which the benefit of concessional rate of duty cannot be allowed. Aggrieved on the rejection of the benefit, the appellants filed appeal before Commissioner (Appeals) who vide the order impugned herein allowed the benefit of notification. Hence, the department is now before the Tribunal against the said order.

3. On behalf of the department, ld. AR Shri B. Balamurugan submitted that Sl. No. 230 of the Notification specifies goods in List 18 required for construction of road in which 'Hot mix plant batch type with electronic controls and bag type filter arrangements more than 120 T/hour capacity' was listed. On inspection of the consignment, it was found that the only filter type was imported and not the bag type filter arrangement as specified in the notification. On behalf of the appellant statements were given that 360 numbers of bag type filters have been supplied with the asphalt mixing plant but the filter assembly (housing) to accommodate the filter bags are indigenously procured from M/s. Basic Engineering Equipments P. Ltd., Mumbai in order to save the cost of freight. Thus, the appellants have not imported the items specified in Sl. No.

230, List 18 and therefore the Commissioner (Appeals) ought not to have allowed the benefit of Notification.

4. Against this, the learned counsel Shri P. Sridharan appearing on behalf of the respondent submitted that as per the notification goods falling under Chapter 84 are any other chapter were exempted from BCD, CVD and SAD subject to the satisfaction of Condition 40 of the Notification. That the respondent has satisfied the conditions specified at Sl. No. 40. Sl. No. 1 of List 18 to Sl. No. 230 of the Notification reads as follows:-

> *'Hot mix plant batch type with electronic controls and bag type filter arrangements more than 120 T/hour capacity'*

5. The hot air exiting from the dryer drum will carry with it dust and other particulate matter which could not be let out into the atmosphere. Therefore, 360 numbers of filter bags were also imported as part of the consignment. An objection was raised that the imported machinery consisting only of 360 numbers of filter bags and not bag type filter arrangement as required by the notification. The amendment was denied for the reason that the appellants failed to include the bag type filter arrangement and the filter was procured locally. The Commissioner (Appeals) has rightly analyzed the issue and held that the respondents are eligible for benefit of notification even though the housing for the filter bags were procured locally. He argued that the notification refers to bag filter

arrangement and does not require the import of housing also. When the function and use of the bag filter is not disputed and the products also have been imported, non-import of the housing alone cannot be a ground for denying the exemption. He relied upon the catalogue and submitted that the goods imported fit well with the description in Notification. The learned counsel also relied upon the judgment in the case of Associated Cement Companies Ltd. Vs. State of Bihar – (2004) 7 SCC 642 and the judgment in the case of Commissioner of Customs, Mumbai Vs. Konkan Synthetics Fibres – 2012 (278) ELT 37 (SC).

6. Heard both sides.

7. On perusal of the impugned order, we find that the Commissioner (Appeals) has discussed in length with regard to the description of the machines / plant imported. He has also perused the catalogue so as to satisfy whether the import of bag filter would be sufficient compliance of importing bag filter arrangement has stated in Sl. No. 230. There is no dispute with regard to the eligibility of the appellant to import the goods. So also the dispute is not with regard to whether the goods are imported for the purpose of construction of road. The only point on which the benefit is denied is whether the goods imported as such would form to the description mentioned in Sl. No. 230 and that too only to the effect that whether it would confirm the bag type filter arrangements. The

respondents have imported filter bags and the adjudicating authority had denied the benefit holding that since the housing has been imported by them, it cannot be called as bag filter arrangement. The Commissioner (Appeals) has discussed in detail with regard to the meaning of the word "Arrangement" and how such word as to be interpreted when used along with the words 'bag filter arrangements'. In the impugned order, the Commissioner (Appeals) has expressed his view that when the plant/machinery are imported for road construction activity and put to use by actual user, denial of the benefit on the sole ground that the housing for the filters are not imported does not keep with the purpose of interpretation of the notification enunciated by the Hon'ble Supreme Court in various judgments. We do not find any ground to take a different view from that expressed by the Commissioner (Appeals).

8. From the above discussions, the impugned order is upheld and the appeal filed by the department is devoid of merits and the same is dismissed. The cross-objection stands disposed of accordingly.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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