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

COURT HALL No.III

CUSTOMS APPEAL No.40644 OF 2013

(Arising out of Order-in-Appeal No.102/2012 dated 20.12.2012passed by Commissioner of Customs& Central Excise (Appeals), No.1, Williams Road, Cantonment, Tiruchirapalli 620 001)

M/s. Sterlite Industries (I) Ltd. **.... Appellant**
Madurai Bye-pass Road,
T.V.Puram PO,
Tuticorin 628 002.

Versus

The Commissioner of Customs, **...Respondent**
Custom House,
New Harbour Estate,
Tuticorin 628 004.

APPEARANCE :

Mr. G. Krishnamurthy, Advocate
For the Appellant

Mr.N. Sathya Narayanan, Assistant Commissioner (A.R)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

DATE OF HEARING : 18.07.2023
DATE OF DECISION : 20.07.2023

FINAL ORDER No.40591/2023

ORDER :Per Ms. SULEKHA BEEVI, C.S.

Brief facts are that the appellant had filed the Bill of Entry dt. 25.09.2012 for the import of 'Rock Phosphate' classifying thegoods under CTH 25101010 as'Natural Calcium Phosphate' which attracts Basic Customs Duty (BCD) of 2.5% andSpecial Additional Duty (SAD) of 4%. The appellant claimed total duty exemption for Special Additional Duty (SAD) vide Customs Exemption Notification No.21/2012 dt. 17.3.2012 under Sl.No.48 which is applicable for fertilizer or raw materials / inputs for the manufacture of fertilizers. It appeared to the Department that the said claim for exemption of SAD is ineligible as the imported goods is neither fertilizer nor is the appellant engaged in sale (or) manufacture of fertilizer. The expert opinion was sought for to test the sample by addressing a letter to the Deputy Director, Regional Fertilizer Control Laboratory, Chennai and also the Director, Central Fertilizer Quality Control and Training Institute (CFQC & TI), Government of India, Ministry of Agriculture, Faridabad, Haryana. Reply was received that *"as per the provisions contained in clause 35 (4) of Fertilizer Control Order, 1985, importer of fertilizer has to inform the Director of Agriculture of the State in which he intends to discharge under intimation to the Central Government before the import with required details".* In the present case, the appellant had not informed about the import of Rock Phosphate from Egypt.

2. Further, benefit of notification can be extended only if the goods are fertilizers. The goods imported is 'Natural Rock Phosphate'

classifiable under Chapter 25 and not under Chapter 31 which is dedicated to fertilizer. The appellant vide letter dated 26.04.2012 stated that the goods will not qualify as 'fertilizer' as per the Food Control Order (FCO) definition and submitted that these are raw materials / inputs for manufacture of fertilizer. The Department was of the view that the appellant being not engaged in manufacture of fertilizer, they are not eligible for exemption by considering the goods to be inputs for manufacture of fertilizer. After due process of law, the original authority denied the claim of exemption and ordered for payment of Special Additional Duty on the goods imported. Against this order, the appellant filed appeal before Commissioner (Appeals) who vide order impugned herein upheld the order of original authority. Hence this appeal.

3. Ld. Counsel Sri G. Krishnamoorthy appeared and argued on behalf of the appellant. It is submitted that the goods imported is 'Rock Phosphate' which is usually called as 'Natural Calcium Phosphate'. The said goods fall under CTH 2510 1010 and not under the tariff heading 3103 which is for fertilizers. Therefore, the Fertilizer Control Order, 1985 is not applicable to the goods imported. The appellant has claimed exemption as inputs for manufacture of fertilizer. Ld. Counsel submitted that when similar issue was raised in the year 2006 by the Assistant Commissioner of Customs, Tuticorin, an appeal was filed by the department before CESTAT. The Tribunal on the basis of the judgment of the Bombay High Court and the Hon'ble Supreme Court held that though the product does not fall

under Chapter 3103 as ‘fertilizer’ as it is a Mineral or Chemical Fertilizer Phosphatic, the importer is entitled for exemption from Special Additional Duty. It was explained by the Ld. Counsel that Rock Phosphate is very much essential for the continuous running of the appellant's plant as Sulphur produced during the course of copper manufacturing cannot be let out into the environment and must be used for producing sulphuric acid which in turn is used for making phosphoric acid. Further, this phosphoric acids have to be cleared to the fertilizer industries. For this reason, the appellant claimed exemption as inputs for manufacture of fertilizers. Ld. Counsel was fair enough to submit that in their own case, the Hon’ble High Court of Madras at Madurai Bench in W.A (MD) Nos.266 to 270 of 2012 vide judgement dt. 10.03.2023 has held the issue against the appellant.

4. Ld. A.R Sri N. Sathya Narayanan supported the findings in the impugned order.

5. Heard both sides.

6. The issue to be decided is whether the ‘Rock Phosphate’ imported by appellant is eligible for exemption from levy of Special Additional Duty (SAD) under Sl.No.48 of SAD Exemption Notification No.21/2012 dt. 17.03.2012. Relevant part of the notification reads as under :

Chapter	Description	Duty
31	Fertilizers and all inputs and raw materials for manufacture of fertilizers	Nil

7. Ld. Counsel has submitted that the issue has been considered by the Hon'ble Jurisdictional High Court and it has been held that the import of 'Rock Phosphate' is not eligible for exemption of SAD. Relevant part reads as under :

> "19. The learned Senior counsel for the importer contend that the Custom Tariff Act is a complete code and therefore external aid from other statute is unwarranted. The learned single Judge has also in the impugned judgment has accepted that contention. This contention is only partially correct. The Act, Schedule to the Act and the Notification goes on the premise that the fertilizers and all inputs and raw materials for manufacture of fertilizers granted exemption from SAD. But for 'rock phosphate' to qualify the definition of 'fertilizer', FCO alone is the source. When it is admitted that the product namely 'Rock Phosphate' does not qualifies the specification required for a fertilizer and when the product also not imported for manufacturing fertilizer and when the importer is also not a manufacturer of fertilizers, the question naturally arise is why then the duty concession should be given?. Interpretation of the law should not cause violence to its intention. Therefore this Court concludes that the order of the learned single judge suffers the following major legal infirmity:-
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> a) The case of the importer does not satisfies the test of reasonableness. The request to classify 'rock phosphate' as 'fertiliser' for the sake of concession even though not utilized for manufacturing fertilisers is a colourable request.
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> b) The earlier order of CESTAT, ought not to have been weighed the learned Single Judge mind, since it was delivered based on a different exemption notification, much prior to the notification under consideration. The case of the importer ought to have been considered in the light of the current notification, the declared intention of the importer and usage of the goods imported.
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> c) The end use may not be the fertilizer, but at least the substantive portion of the goods imported ought to have been used as fertilizer. The exemption for entire goods imported for a different purpose cannot be granted duty exemption on the hypothetical claim that a portion of the goods imported also used for manufacturing fertilizer.
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> d) The notes attached to Chapter 31 of the First Schedule while clearly indicate that natural phosphate of heading 2510, calcined or further heat treated than for the removal of impurities aloe is entitled for exemption from SAD, the importer having claimed that the goods imported falls under heading 2510, cannot get the benefit of

concession without satisfying the conditions mentioned above in the notes.

e) The case of duty exemption is based on the facts of each case and each import. Decision in a different case rendered on different point of time and concession notification ought not to have been taken as a binding precedent or a bar for the department to consider imposing CAD in the given set of new facts.

20. It is well settled principle of law that in case of exemptions, law should be strictly interpreted and liberal interpretation detrimental to revenue is not advocated. In the present case, the impugned order due to the infirmities noted has caused injury to the revenue hence to be redressed.

21. In the result, these writ appeals are allowed. Orders dated 22.01.2013 passed by Learned Single Judge in W.P. Nos. 12374 to 12377 of 2012 and W.P.No.12988 of 2012 stands set aside. The order of the Customs Department declining to grant SAD exemption is upheld. No order as to costs. Consequently, connected miscellaneous petitions are closed. "

8. By judicial discipline, applying the ratio laid down by the Hon'ble Jurisdictional High Court, we are of the considered opinion that the goods imported are not eligible for the exemption of SAD as per the said notification. The impugned order is sustained. The appeal is dismissed.

(Pronounced in court on 20.07.2023)

sd/-	sd/-
(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI C.S.)**
Member (Technical)	Member (Judicial)

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