

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH – COURT NO. IV

CUSTOMS APPEAL No. 50275 of 2021

(Arising out of Order in Appeal No. CCA/CUS/D-I/Import/NCH/884-885/19-20 dated 24.02.2020 passed by Commissioner of Customs (Import), New Custom House, New Delhi)

M/s. Polixel Security System Pvt. Ltd.

...Appellant

D-7, Dhawandee Apartment,
6, Jantar Mantar,
New Delhi – 110 001

Versus

Commissioner of Customs (Import),

....Respondent

New Custom House,
New Delhi.

WITH

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APPEARANCE:

Mr. Rupender Sinhmar, Advocate for the appellants
Mr. Mahesh Bhardwaj, Authorized Representative for the
Respondent

CORAM : HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing: **23.09.2022**

Date of Decision: **27.10.2022**

FINAL ORDER No. 51032-51033/2022**DR.RACHNA GUPTA**

The present both appeals have been filed to assail the Order-in-Appeal Nos.884-885/2019-20 dated 25.02.2020 vide which the denial of benefit of Project Imports Regulations, 1986 has been confirmed. Also an order of payment of the required customs duty along with interest and the penalty as was confirmed vide original adjudicating authority has been upheld.

2. The facts in brief relevant for present adjudication are that the appellants have been engaged in import of goods for the project meant for Prayagraj Thermal Power Project Generation of Co. Ltd. The importer – appellants submitted a letter No.165/24/15-43/09 dated 12.03.2013 issued by Uttar Pradesh State in respect of Prayagraj Thermal Power Project about their eligibility for duty exemption as per Project Import Regulations, 1986 ('PIR' hereinafter). The appellants also executed an indemnity bond and a cash security deposit in the form of Bank Guarantee.

The details for both the appeals are as follows:-

Appeal No.	Show Cause Notice No. & Dt.	Demand confirmed	PIR Regd. No.	Amount of Indemnity Bond	Amt. of Cash Security deposit	Order in Original No. & date	Order in Appeal No. & date
C/50275/2021	14/2016 Dt.28.12.16	Rs.7,18,110	01/2015	Rs.24,40,000	Rs.7,19,000	31/2017 Dt.31.8.17	884-885/ 2019- 20 Dt.24.2.20
C/50276/2021	15/2016 Dt.28.12.16	Rs.2,58,300	02/2015	Rs.8,77,287	Rs.2,58,300	32/2017 Dt.31.8.17	884-885/ 2019- 20 Dt.24.2.20

3. The Bill of Entry was filed by the appellants for clearance of goods and the clearance thereof was obtained at 'nil' rate of duty. The requirement for the same was the registration of contract of appellants under Regulations of PIR which was duly registered in Customs under Registration mentioned as above. However, Department vide Show Cause Notice as mentioned above while alleging the violation of Regulation 7 of PIR had proposed to deny the benefit of PIR for importing goods at 'nil' rate of duty, rather had proposed the recovery of total duty as above along with interest and the penalty. The said proposal was initially confirmed vide Order-in-Original as mentioned above. The appeals thereof have been rejected vide the orders under challenge. Being aggrieved the appellants are before this Tribunal.

4. I have heard Mr. Rupender Sinhmar, Id. Counsel for the appellants and Mr. Mahesh Bhardwaj, Authorised Representative for the Revenue.

5. It is submitted on behalf of the appellants that the Regulations 7 was mere procedural in nature, the non-compliance thereof has wrongly been held as a ground for denying the substantial benefit of imports at 'nil' rate of duty. It is submitted that Commissioner (Appeal) has ignored the factum of eligibility of the appellants under PIR rather has given more weightage to procedural lapse. The order is liable to be set aside on this score only. It is further submitted that the documents as required under Regulation 7 could not be submitted as the appellants had not received those documents from Prayagraj Power Generation

Company Ltd. Hence, the delay was beyond their control. The obligation of appellants of being a registered contractor has otherwise been duly fulfilled. Orders under challenge are accordingly, prayed to be set aside.

6. While rebutting these submissions Id. D.R. has mentioned that the eligibility of appellants has nowhere being denied by the Commissioner (Appeals). It is rather appellants' own admission that Regulation 7 of PIR has been violated. The requisite documents were not furnished during the time stipulated nor the extension thereof was prayed by the appellants. As per the undertaking bond of the appellants, the failure for observing the conditions of PIR was sufficient for holding the bond as void. It is submitted that Commissioner (Appeals) has rightly relied upon the decision of Hon'ble Apex Court in the case of **M/s. Mihir Textiles Ltd. Vs. CCE, Mumbai reported 1997 (92) ELT 9 (S.C.)**. Impressing upon no infirmity in the orders, appeals in hand are prayed to be dismissed.

7. After hearing the rival contentions and perusing the record, I observe the following to be the moot controversy in the present case:-

"Whether violation of Regulation 7 of Project Import Regulations, 1986 is sufficient to deny the duty benefit to the appellants?"

8. To adjudicate the same, the provision foremost is perused which reads as follows:-

"The importer shall within three months from the date of clearance for home consumption of the last consignment of the goods or within such extended period as the proper officer may allow, submit a statement indicating the details of the goods imported together with necessary documents as proof regarding the value and quantity of the goods so imported in terms of this Regulation and any other document that may be required by the proper officer for finalization of the contract."

9. The perusal of the provision reveals that the language used therein does not make the provision mandatory. There are conditions in the statute that some of those may be substantive, others may be mandatory and based on consideration of policy and some others may merely belong to the area of procedure. To my opinion it will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purpose they were intended to serve. Seen in the light of this prospective, I opine that the conditions of provision / Regulation 7 are not mandatory, they are merely directory only for the following reasons:-

1. There is nothing in this provision which disentitles the importer to avail the exemption if the statement is not submitted within the stipulated time.
2. The provision itself provides for extending the period for submitting the statement.

It means that the Regulation itself confers discretion to grant extension of time for furnishing the statement.

10. Hon'ble Apex Court in the case of **Mangalore Chemicals and Fertilizers Limited vs. Dy. Commissioner** reported as **1991 (55) ELT 437 (S.C.)** has held that the consequence from the non-compliance of a provision indeed be the result if the condition of the provision was a substantive one and once fundamental to the policy underlined the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."

11. Further perusal of the said provision/Regulation shows that filing of re-conciliation statement is not one of the conditions for eligibility.

12. Reverting to the facts of the present case, there is no dispute for the following facts:-

- (a) For imports vide respective Bills of Entry, the appellants submitted the requisite documents for project registration for the goods imported vide said Bills of Entry.
- (b) The bond and Bank Guarantee required for registration of contract were accepted on 22.04.2015.

- (c) The contract of the appellants was registered under registration No.01 & 02/2015.
- (d) Letter issued by Uttar Pradesh State dated 12.03.2013 (as already mentioned above) was also filed wherein it was certified that the Prayagraj Thermal Power Project is eligible for duty exemption as per PIR and Chapter 98.01 of Customs Notification No.12/20120-Cus. dated 17.03.2013.

Thus, apparently and admittedly, there is no dispute that the appellants were eligible for the benefit under PIR Regulations. The adjudicating authority below has relied upon the decision of Hon'ble Apex Court in **Mihir Textiles (Supra)** while confirming the demand upon the appellants and denying him the benefit of Notification, but to my opinion the said case is not applicable to the given facts and circumstances of present cases because the appellant therein was not registered and as such, was not eligible whereas in the present case the appellants' eligibility is not in question.

13. In the present cases the purpose of statute was to grant a beneficial rate of duty to the goods imported for setting up a new project, the appellants was such a project and had satisfied the conditions for eligibility Regulation 7 comes into force much after the imports are over and is actually meant only to facilitate finalization of provisional assessment. It did not have any effect on the eligibility to the lower rate of duty. I draw my support from the decision of this Tribunal in the case of **Gas Authority of India Ltd. reported in 2003 (159) ELT 468**. High Court of Andhra Pradesh

in the case of **CCE, Hyderabad vs. Creative Indus Pvt. Ltd. reported in 2012 (282) ELT 349** where after a gap of ten years Department required the assessee to produce an installation certificate in terms of Regulation 7 of PIR the Tribunal held that there is no requirement of producing any Installation Certificate in terms of Regulation 7 of the Regulations. The Tribunal further held that there is no such condition for determining the eligibility of the concessional rate of duty. On appeal, the Hon'ble High Court upheld the decision and held that there is no reason to take a view different from that expressed by the Tribunal more particularly since there is no requirement of an Installation Certificate to be furnished by the assessee in the language of Regulation 7 above.

14. In view of entire above discussion, I hold that substantial benefit of exemption from Customs duty has wrongly been denied by invoking procedural provision which is not at all mandatory. The findings are therefore, set aside. In view of entire above discussion, I hereby set aside the impugned order. However, the cases are remitted to the original authority for finalizing the assessment in terms of project contract in the light of reconciliation statement filed. The appeals are ordered, accordingly.

[Pronounced in the open Court on 27/10/2022]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

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