

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Customs Appeal No. 51186 of 2020

(Arising out of Order-in-Appeal No. 39(SM)CUS/JPR/2020 dated 7.08.2020 passed by the Commissioner (Appeals) Central Excise and CGST, Jaipur.)

M/s. Acme Cleantech Solutions Ltd

Plot No. 152, Sector 44, Gurugram
Haryana-122 022

....Appellant

Versus

**Commissioner of Customs (Appeals),
Central Excise & CGST, Jaipur**

NCRB, Statue Circle, Jaipur-302005

....Respondent

APPEARANCE:

Ms. Mannat Waraich, Ms. Anshika Agarwal and Ms. Arya Mittal, Advocates for the Appellant
Shri Nagendra Yadav, Authorised Representative of the Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: January 30, 2025

FINAL ORDER NO. 50289/2025

JUSTICE DILIP GUPTA

M/s Acme Cleantech Solutions Ltd¹ is aggrieved by the order dated 07.08.2020 passed by the Commissioner (Appeals). This order rejects the appeal filed by the appellant against the order dated 24.09.2018 passed by the Assistant Commissioner finalizing the provisional assessment of six Bills of Entry and orders for recovery of safeguard duty and corresponding IGST in terms of a Notification dated 30.07.2018.

2. It transpires from the records that Indian Solar Manufacturer Associate, a domestic industry, sought imposition of safeguard duty on

1 the appellant

the import of cells and modules. On 28.11.2017, proceedings were initiated for imposition of safeguard duty and, ultimately, the Director General (Safeguards) by final findings dated 16.07.2018 recommended levy of safeguard duty. The final findings were assailed in Writ Petition No. 12817 of 2018 before the Orissa High Court and by an order dated 23.07.2018, the Orissa High Court restrained the Union of India from issuing any notification for imposition of safeguard duty, except with the leave of the Court. It is stated that despite the aforesaid interim order passed by the Orissa High Court, the Central Government issued a Notification dated 30.07.2018 imposing safeguard duty on the import of cells and modules. Soon thereafter, the Government of India also issued instructions on 30.08.2018 directing officers not to insist on payment of safeguard duty in terms of the Notification dated 30.07.2018 and also instructed that the goods may be permitted to be cleared provisionally on furnishing of a letter of undertaking/bond.

3. The appellant claims that it imported solar modules between 10.08.2018 and 16.08.2020 on provisional basis in terms of the instructions issued by the Government of India.

4. The interim order dated 23.07.2018 passed by the Orissa High Court was assailed by the Government of India before the Supreme Court and by an order dated 10.09.2018, the Supreme Court stayed the interim order passed by the Orissa High Court. Thereafter, the Government of India issued instructions dated 30.09.2018 withdrawing the earlier instructions dated 30.08.2018 and directed that safeguard duty should be collected in accordance with the notification issued by the Government of India.

5. It further transpires that on 16.11.2020, the Supreme Court permitted the High Court to hear the writ petition on merits.

6. Pursuant to the aforesaid direction of the Supreme Court, the Madras High Court decided the writ petition filed by Shapoor Pallonji Infrastructure Capital Co. Private Ltd. and, ultimately, by judgment dated 26.04.2018 disposed of the writ petition. The Madras High Court, after noticing that the interim order passed by the Orissa High Court on 23.07.2018 was in force when the Notification dated 13.08.2018 was issued by the Government for imposition of safeguard duty, held that the said notification would become operative only from 10.09.2018, on which date the Supreme Court stayed the interim order dated 23.07.2018 passed by the Orissa High Court. The observations of the Madras High Court in **Shapoor Pallonji Infrastructure Capital Co. Private Ltd vs. The Union of India**² are as follows:

“40. In the present case, though the interim order of injunction was in force when the notification was issued, the said order was stayed by the Apex Court on 10.9.2018 and on and from 10.9.2018, the notification would become operative, as the prohibitory order did not exist. The contention of the petitioners that as the notification was issued during the subsistence of the prohibitory order, even after the prohibitory order was stayed by the superior court still the notification would be inoperative, cannot be comprehended.

41. The notification issued is legislative in character. The executive exercised the powers of delegated legislation. The notification, during the subsistence of the interim order of injunction, is certainly inoperative, but on and from the date the stay was granted by the Apex Court to the prohibitory order passed by the Orissa High Court, the notification will become operative and binding upon the parties. The Central Government would not be required to issue a fresh notification after the order of injunction was stayed.

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2 W.P. Nos. 20476 of 2018 etc. batch decided on 26.04.2024

43. In view of the law enunciated by the Apex Court in a catena of decisions, referred supra, it can safely be held that on and from the date the order of injunction passed by the Orissa High Court was stayed by the Apex Court, i.e., 10.9.2018, the notification became operative and effective.

44. In W.P.No.20478 of 2018, the petitioner has been assessed for safeguard duty vide Bill of Entry dated 2.8.2018. The same was during the subsistence of the prohibitory order passed by the Orissa High Court and before the stay was granted by the Apex Court. The respondents, certainly, could not have assessed the same, as during the said period the notification could not have been issued. The respondents also suggest that the same should not be assessed. Therefore, the order of self-assessment, vide the impugned Bill of Entry No.7474159, dated 2.8.2018, to the extent it seeks to impose safeguard duty pursuant to the notification dated 30.7.2018, is illegal and arbitrary, inasmuch as it was issued during the subsistence of the order of injunction, and accordingly the same is quashed and set aside."

7. The contention of Ms. Mannat Waraich, learned counsel for the appellant is that in view of the judgment of the Madras High Court in **Shapoor Pallonji Infrastructure Capital**, safe guard duty could not have been imposed on the Bills of Entry filed by the appellant between 10.08.2018 to 16.08.2018 for the reason that during this period interim order dated 23.07.2018 passed by the Orissa High Court was operating.

8. Shri Nagendra Yadav, learned authorized representative appearing for the department has, however, submitted that the matter before the Supreme Court, in which the interim order passed by the Orissa High Court was under challenge, is still pending before the Supreme Court and, therefore, the appellant is not justified in asserting that safeguard duty cannot be imposed. Learned authorized representative also pointed out that same issue is pending before other High Courts also.

9. The contention advanced by learned counsel for the appellant deserves to be accepted. It is not in dispute that the Bills of Entry were filed by the appellant for import of solar modules between 10.08.2018

and 16.08.2018. The safeguard duty was imposed in terms of the Notification dated 13.08.2018 issued by the Government of India pursuant to the final findings rendered on 16.07.2018. In view of the decision of the Madras High Court in **Shapoor Pallonji Infrastructure**, safeguard duty could not have been imposed between 23.07.2018 (on which date the interim order was granted by the Orissa High Court) and 10.09.2018 (on which date the Supreme Court vacated the interim order by the Orissa High Court).

10. The impugned order passed by the Commissioner (Appeals) confirming the demand of safeguard duty only on the basis of the Notification dated 30.07.2018 issued by the Central Government, therefore, cannot be sustained.

11. The impugned order needs to be set aside and is set aside. The appeal is, accordingly, allowed with consequential reliefs, if any.

(Order dictated in the Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER(TECHNICAL)