CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

APPEAL No. C/317/2010

*(Arising out of **Order-in-Appeal** No. 24/2009(V-II)CUS, dated 22.10.2009 passed by CCCE&ST (Appeals), Visakhapatnam)*

CC VIJAYAWADA .. APPELLANT
CUSTOMS PREVENTIVE COMMISSIONERATE

Vs.

OCEAN SPARKLE LIMITED .. RESPONDENT

Appearance

Shri A.V.L.N.Chary, Superintendent for the Appellant.

Shri Shankar Bala, Chartered Accountant for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 26.10.2018
Date of Decision: 26.10.2018

FINAL ORDER No. A/31460/2018

[Order per: Mr. M.V. Ravindran]

1. This appeal is filed by Revenue against Order-in-Appeal No. 24/2009(V-II)CUS, dated 22.10.2009.

2. The relevant facts that arise for consideration are, the respondents herein floated an enquiry for Cutter Suction Dredger and received

quotation for the same from overseas supplier with additional features and optioned for measuring the quantity of dredged item for an incremental price. Respondents placed an order for Cutter Suction Dredger including double walled dredge pump, dredge automation systems, air conditioning and production measuring equipment. On receipt of such Dredger with all the equipments, bill of entry was claimed, claiming the classification under 8905 1000 of Customs Tariff Act, seeking benefit of Notification No. 21/2002-Cus, dated 01.03.2002 from payment of duty. The said notification exempts Dredger as a whole. Revenue authorities after conducting first check examination, directed the appellant to file a Bill of Entry for production measuring equipments separately under tariff heading 90.31 and denied the exemption of notification No. 21/2002-Cus. Appellant contested the said Bill of Entry before the adjudicating authority. The adjudicating authority, after following due process of law, came to a conclusion that production measuring equipment is correctly classifiable under chapter heading 90.31 and as the said item is not covered under notification 21/2002-Cus, held that exemption is ineligible and passed the order. Aggrieved by such an order, an appeal was preferred to the first appellate authority and the first appellate authority after following due process of law, relied upon the examination report and expressed opinion to hold that production measuring equipment is part and parcel of Dredger and hence it cannot be considered as a separate item for classification under chapter heading 90.31; holding so set aside the Order-in-Original.

3. Ld. DR after taking us through the entire records submits that the first appellate authority has wrongly held that it is not a mandatory requirement to follow the chapter notes for classification of goods is incorrect; the exemption notification in this case is with reference an item in the schedule to Customs Tariff Act and it exempts all goods fall under Chapter Heading 8905 1000 and if an item is not classifiable under the said chapter, then the exemption notification cannot be extended; it is a well settled position of law that exemption notification is an exception and with reference to first schedule, it has to be considered with the chapter notes. IT is his submission that the items which is covered under 8905 1000 is only Dredgers and not the dredging system if the production measuring equipment is fitted on the Dredger, it is nothing but dredging system and not a dredger. It is also his submission that there is no mention in the notification regarding parts and accessories such as optional equipments to hold that the production measuring equipment is eligible for exemption under Sl.No.353A of notification No. 21/2002. He submits that the impugned order be set aside.

4. Ld. Counsel appearing for the respondent draws our attention to the examination report of Officers. He submits that it is specifically mentioned in the report that production meter is supplied by manufacturer as an in built part of the entire system of the dredging equipment by duly fitting in piping section towards discharge side of dredged material. He would submit that

the first appellate authority was correct in setting aside the Order-in-Original.

5. On careful consideration of the submissions made and the perusal of Exemption notification and the photographs enclosed of the item imported, we find that Cutter Suction Dredger which was imported is with the production measuring equipment as a part and parcel of the dredger. It is very important to note that the first check conducted on the said dredger by the examiners and Superintendent, the following is recorded.

> *"As directed, along with Supdt (Docks) conducted physical verification of the production meter with cross needle indicator. It is observed that the production meter is supplied by the manufacturer as an in built part of the entire system of the dredging equipment by duly fitting in the piping section towards the discharge side of dredged material. The function of the production meter is to measure the production quantity i.e. the dredged material which enable the operator to adjust the other parts of the dredger i.e. cutter, pump etc. according to the requirements. The production meter is so integrated with the dredging equipment that it cannot be dismantled normally and even it is dismantled it cannot be used for any purpose other than for use as a measuring equipment in dredging operation. IT is customized for use as integral part of this type of dredgers. Hence, by its physical integration and also by its usage in the dredging operation, it is an integral part of the dredger."*

6. It can be seen from the above reproduced examination report that the production meter is so integrated with the dredging equipment that it cannot be dismantled and is used for as an integral part of the dredger imported. We find that the first appellate authority was correct in holding that production measuring equipment is part and parcel of the dredger and cannot be classified separately under chapter heading 90.31. The findings of the first appellate authority on this point are very relevant which we concurred with and reproduced.

> *"From the material available on record, I am not in any sort of doubt that the production meter and the cross needle indicator constitute part of the dredging system. No dredger or for that matter most of the heavy machinery can never be defined in isolation. They are infact reminiscent of a system, that has been designed to achieve the stated objective in an efficient manner. I find that the dredger in the instant case also, is infact a dredging system designed and put together by its manufacturers, to carry on dredging operations. Pumps, motors, electrical and electronic equipment etc., all constitute inseparable components of such system. I have also examined the expert opinion furnished by the appellants with great care. The said opinion, indeed compliments my finding that the equipments all put together, can only be reckoned as a dredging system. The reference to a dredger, in Tariff sub-heading 890510000 of the Customs Tariff, for this very simple reason, has always to be construed as a reference to a dredging system. For doing so, there need not be any specific prescription in the chapter notes, section notes etc. for there could be no room or cause for ambiguity on understanding of a straight issue as the present one. I find the observation of the original authority, to the effect that, for arriving at such a conclusion specific prescription in the chapter notes, section notes etc., is a mandatory requirement does not reflect the contemplation of the law in this regard. I find that insistence on those lines as was done by the original authority, could only breed perverse and inherently contradictory conclusions."*

7. We concur with the views of first appellate authority, we hold that the impugned order is correct and legal and does not require any interference.

8. Impugned Order is upheld and appeal is rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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