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

Division Bench

Court – I

Customs Appeal No. 4 of 2011

(Arising out of Order-in-Appeal No.14/2010 (V-II) CUS dt.30.09.2010 passed by CCCE & ST (Appeals), Visakhapatnam)

Commissioner of Central Tax,
Visakhapatnam - GST
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035 **......Appellant**

VERSUS

Western Geco International Ltd

14th Floor, Tower-C, Building No.10,
DLF Cyber City, Phase – II,
Gurgaon – 122 002 **......Respondent**

Appearance

Shri C. Mallikarjun Reddy, Authorized Representative for the appellant.
Shri C. Sumanth, Chartered Accountant for the respondent.

Coram:

HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30325/2020

Date of Hearing: 10.02.2020
Date of Decision: 10.02.2020

[Order per: ASHOK JINDAL]

1. Revenue is in appeal against the impugned order wherein the learned Commissioner (Appeals) has allowed the benefit of Notification No. 21/2002-CUS (Sl.No.217) dt.01.03.2002 to the respondent and dropped the demand raised against them.

2. The facts of the case are that the respondent filed bill of entry for importation of seismic research vessel viz., 'M.V.CREST RADIANT-5' with consumable stores such as marine gas oil, hydraulic, lubricating & gas oil,

grease, paints & thinners claiming the benefit of exemption notification No. 21/2002-CUS dt.01.03.2002 on the basis of the Essentiality Certificate issued by the Directory General of Hydrocarbons. The goods were subjected to examination by a chemical examiner and a test report was obtained. On the basis of the test report, it was found that the marine gas oil imported by the appellant is having the characteristics of light diesel oil and they are not entitled for the benefit of exemption notification No. 21/2002-CUS dt.01.03.2002. Therefore, the proceedings were initiated against the respondent. The benefit of the exemption notification was denied and consequently, the demands were raised against the respondent. Learned Commissioner (Appeals) classified the impugned goods under CTH 2710 1990 of Custom Tariff Act, 1975 and allowed the benefit of exemption notification No. 21/2002-CUS dt.01.03.2002 and dropped the proceedings against the respondent. Aggrieved by the order of the learned Commissioner (Appeals), the revenue is before us.

2. Learned AR submits that the goods were sent to chemical examiner and as per the report, he classified the goods as having the characteristics of light diesel oil and the same are classifiable having specific entry under Customs Tariff i.e., CTH 2710 1940. Therefore, respondent is not entitled for benefit of exemption notification No. 21/2002-CUS dt.01.03.2002.

3. On the other hand, learned consultant for the respondent submits that the issue has been settled in their own case by this Tribunal vide Final Order No.A/31582-31618/2017 dt.13.09.2017, where this tribunal has allowed the benefit of exemption notification. Therefore, the issue is no longer *res integra*.

4. Heard both sides and perused the records.

5. On perusal of records, we find that initially the issue came up before this Tribunal in the case of CGG Marine vs Commissioner of Customs & Central Excise, Visakhapatnam in appeal C/91/2007 and this tribunal vide Final Order No.A/30472/2016 dt.16.05.2016 has examined the issue in detail and observed as follows:

"6. We find that the facts of the above cited case law are indeed on all force with that of the appeal before us. Hence, we have no hesitation in following the above cited decision in the Transocean Discoverer case and hold that what was imported was Marine Gas Oil and not Light Diesel Oil and hence the benefit of exemption under CN 21/2002, Sl.No.217, against the Essentiality Certificate issued by the Director General of Hydrocarbons, will be available to said Marine Gas Oil.

7. We also find merit in the appellant's contention that duty exemption will require to be granted to consumption of consumables during onward and return journey, since such consumption has to be necessarily treated as operations "in connection with" the petroleum operations."

6. As there is no dispute that the appellant has obtained the Essentiality Certificate issued by Director General of Hydrocarbons that the said goods have been used in connection with the petroleum operations, therefore, relying on the decision in the case of CGG Marine (supra), we hold that the respondent is entitled for the benefit of exemption notification No. 21/2002-CUS dt.01.03.2002 (Sl.No.217).

7. In view of this, we do not find any infirmity in the impugned order and the same is upheld.

8. In the result, the appeal filed by the revenue is dismissed.

(Dictated and pronounced in open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

Veda