CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
REGIONAL BENCH, HYDERABAD.

Customs Appeal No.140 of 2010

[Arising out of Order-in-Appeal No.26/09 (G) Cus dated 5.11.2009 passed by the Commissioner of Customs & Central Excise (Appeals), Guntur]

Commissioner of Customs & Central Excise, **Appellant**
Central Revenue Building,
Kannavarithota,
Guntur-522 004,
Andhra Pradesh.

Versus

M/s. Navayuga Engineering Company Ltd. **Respondent**
No.1259, Lakshmi Towers, Road No.36, Jubilee Hills, Hyderabad-500 033.

APPEARANCE:

Shri A. Rangadham, Authorised Representative for the appellant/Department.
Shri G.Natarajan, Advocate for the respondent.

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.30917/2020

DATE OF HEARING/DECISION:04.03.2020

ANIL CHOUDHARY:

The issue in this appeal by Revenue is whether the ld. Commissioner (Appeals) has rightly allowed exemption for import of spare parts for "Cutter Suction Dredger", together with optional equipment and spare parts, being exempted under notification no.21/2002 (Sl.No.357) dated 1.3.2002, as amended.

2. Ld. Authorised Representative, Shri A. Rangadham, reiterates the grounds of appeal of Revenue and urges that under Entry No.357 of the said notification no.21/2002-Cus, the exemption is for parts, for repair of Dredger falling in any Chapter. Thus, exemption is available, if the parts are used for

repair only. In the instant case, the respondent had imported a new Dredger, which does not require any repair at the time of import. Thus, the import of dredger in working condition does not warrant importation of parts for the purpose of repair. Since the condition of repair is not fulfilled at the time of import, the exemption under the aforementioned notification is not allowable for want of fulfilment of the conditions – for rapair. Further, it is urged that that exemption cannot be allowed on the presumption that the parts would be ultimately used for repair.

3. He further urged that the Adjudicating Authority relying on the Section Note -2 to Section XVII held that the expression "parts and accessories" does not apply to the machines or apparatus under Chapter Heading No.84 or parts thereof. Further, it is urged that spare parts imported along with the Dredger are having independent identity, marketability and function, and hence, the aforementioned exemption is not available for parts.

4. Opposing the appeal, the ld. Counsel, Shri G. Natarajan appearing for the respondent – assesssee draws our attention to the following findings recorded by the ld. Commissioner (Appeals):-

> *"5.0 It is respectfully submitted that the entry contained at Sl.No.357 of the Notification No.21/2002-Cus dated 1.3.2002, it is clear that if the imported parts are parts of dredger and meant for repair, then the same is fully exempted irrespective of its classification and there is no condition attached. The notification does not insist on any production of end use certificate.*
>
> *6.0 The contention that the imported parts of the dredger are only spare sets of items and cannot be described as parts of repair does not stand as any spare part is only meant for repair and servicing and as such the question of denying the exemption to spare parts is not at all sustainable.*

> *7.0 In the light of the above submissions, it is prayed before the Hon'ble Tribunal to take cognizance of the above submissions and uphold the order-in-appeal no.26/2009 (G) Cus dated 05.11.2009 of the Commissioner (Appeals)."*

5. It is further urged that the Revenue has mis-construed the exemption notification by taking the view that spares are not exempt, as they are not likely to be used immediately at the time of import. The exemption notification is quite clear, that spare parts falling under any Chapter meant for repair for dredger are exempt without any condition. Accordingly, he prays for dismissal of the Revenue's appeal.

6. Having considered the rival contentions, we hold that there is no additional condition attached in the Entry at Sl.Nos.357 under the notification no.21/2002 (Cus) with regard to exemption for parts, for repair of dredger falling under any Chapter. Thus, we are satisfied that the Revenue has mis-interpreted the notification no.21/2002 (Cus).

7. We further, hold that there can be no disallowance of exemption on parts imported for present or future use, in absence of such conditions stipulated in the said notification. Accordingly, this appeal by Revenue is dismissed. The respondent/assessee is entitled to consequential benefits.

[Operative portion already pronounced in open court]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(**P. VENKATA SUBBA RAO**)
MEMBER (TECHNICAL)

Ckp.