IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL KOLKATA
EAST ZONAL BENCH, KOLKATA

Date of Hearing/Decision: 18.5.2018
Appeal No. C/186/2009

(Arising out of Order-in-Appeal No. KOL/CUS/CKP/83/09 dated: 24.02.2009 passed by the Commissioner of Customs,(Appeal) Kolkata)

National Aluminum Company Ltd Appellant
Vs
The Commissioner Customs, Kolkata Respondent

Appearance
Shri S.C. Mohanty,Adv for the appellant

Shri S. Gohar, AC(DR) for the respondent

CORAM:**Hon'ble Mr. P.K. Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No F/76410/2018
Per: Bijay Kumar

The present appeal has been filed against the impugned order wherein the Commissioner (Appeal) has upheld the order passed by the Lower Adjudicating Authority. The lower Adjudicating Authority had denied of the project import benefit to the appellant classifiable under heading 98101 of Customs Tariff Act, 1975, in terms of project import Regulations, 1986 (in short PIR-96).

2. The fact of the case is that the appellant has imported the goods vide Bill of Entry dated 6/11/2000 and put them under Customs bonded warehouse for want

of non-registration of contract required for the benefit under project import regulation prior to import of capital goods. The lower Adjudicating Authority has denied the benefit of assessment under project import on that ground alone which was upheld to be correct in Appeal that in order impugned.

3. The Ld. Advocate on behalf of the appellant submits that the Commissioner (Appeal) in the impugned order has incorrectly held that the appellant is not entitled for benefit of their imports to be assessed under scheme of PIR (1986) on the following grounds.

- That the regulation 5 provides for filing of application for registration of contract with Jurisdictional Customs Authority, <u>on or before importation</u>, but the Ld. Commissioner (Appeal) has held that the application is required to be filed before importation, which is incorrect interpretation of the PIR scheme of 1986.
- That the regulation 4 the PIR-86 stipulates that the registration of contract is required to be obtained clearance of imported goods for **Home Consumption.** This has been completely overlooked by the Commissioner (Appeal) in his findings.
- That the appellant having applied for the registration of contract on importation of goods, and obtain the same before the filing of Bill of Entry for **Home Consumption** as compliance with the regulation 4 and 5 of PIR-86, and therefore, they are entitled for the benefit under the Project

Import Regulation. That the legal interpretation of the term 'import' and the imported goods relied upon by the Lower Adjudicating Authority has got no relevance in the context of PIR-86, which has specifically provides for filing application for registration on or before the importation but before the clearances of goods for **Home Consumption**.

- That the demand is hit by the limitation under Section 28 of Customs Act 1962 since the appellant has duly complied with the post importation conditions in December 2002 itself; non-finalization of assessment by the Department and keeping the same provisional for years together without any valid reason, the benefit of extended period of limitation needs to be rejected. That the CBEC's own guidelines contained in the Customs manual has not been followed to that effect which is binding on the departmental authority.

4. The Ld. DR reiterated the ground contain in the impugned order and also states that in this case the Registration of contract for IPR has been done after the importation and hence the benefit is not to be extended. The assessment is provisional time bare would also not be applicable.

5. We have heard the parties and also peruse the appeal records.

6. The issue before us is to decide as to whether the Commissioner (Appeal), in the impugned order, as correctly followed the provisions of PIR-86 while rejecting the appeal filed by the appellant. It is the contention of the assessee

that they have got the project registered before the competent authority after the import of consignment intended to be cleared under Project Import Regulation. As they were contemplating to clear the imported consignment by availing the benefit of Project Import under Chapter 98101 they decided to put the imported goods in the Customs bonded warehouse till the grant of registration by the competent authority. In this case the consignment was imported and the Warehouse Bill of Entry was filed for the clearance of goods on 6.11.2000. The appellant has obtained the recommendation of sponsoring authority for the registration of contract on 7.11.2000 and submitted the application with the Customs under Regulation No. 5 of PIR-86 on 14/11/2000. Thereafter, the Bill of Entry was filed by the appellant for clearance of goods by availing of the assessment, under Chapter heading 9101 of Customs Tariff Act, 1975, on 20/11/2000. After finalization of the contract registered under PIR-86 the appellant has submitted the reconciliation statement on 5/2/2000 and also final payment certificate was submitted by the appellant on 11/12/2012. At that point of time no irregularity was informed by the Customs thereafter the gap of six years the demand for short levy was issued under Section 28(1)(b) of Customs Act, 1962 seeking the denial of Project Import Benefit and consequential recovery of deferential duty amounting to Rs 9,25,0001 dated 30/05/2008 the appellant replied the same on 11/08/2008 and the Department raised the demand without disputing the fact and fulfillment of bond condition. In their defence, the appellant also took the issue of time bar as the demand was raised after the expiry of seven and a half years. From analyses above chronological event, we find that the assessee's contention is correct regarding the late issuance of the Show Cause Notice, however, the entire Project Import Benefit is assessed the Customs duty on a provisional basis under Section 18 of Customs Act 1962, and therefore, the time bar could not be applicable in the fact and circumstances of case. However, going by the project Import Regulation 1986, in Rule for thereof issued vide Notification 230/86 Customs dated 3.4.1986, the relevant portion of which is reproduced as under;

Eligibility- The assessment under the said heading No 98.01 shall be available only to those goods which are imported(whether in one or more than one consignment) against one or more specific contracts, which have been registered with the appropriate Customs House in the manner specified in regulation 5 and such contract or contracts has or have been so registered-

(i) before any order is made by the proper office of customs permitting the clearance of the goods for home consumption;

(ii) in the case of goods cleared for home consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses and conferences, duty sponsored or approved by the Government of India or Trade Fair Authority of India, as the case may be, before the date of payment of duty.

Registration of contracts-

(1) Every importer claiming assessment of the goods failing under the said heading No. 98.1, on or before their importation shall apply in writing to the proper office at the port where the goods are to be imported or where the duty is to be paid for registration of the contract or contracts, as the case may be.

Provide that in these of consignments sought to be cleared through a Customs House other than the Custom House at which the contract is registered, the importer shall produce from the Custom House of registration such information as the proper officer may require.

(2) The importer shall apply, as soon as after he has obtained the import trade control licence wherever required for the import of articles covered by the contract and in case of imports covered by the Open General Licence or imports made by Central Government, any State Government, statutory cooperation, public body or Government undertaking run as a joint stock company(hereafter referred to as ‘Government Agency”) as soon as clearance from the Directorate General of Technical Development or the concerned authority, as the case may be, has been obtained.

(3) the application shall specify-

(a) the location of the plant or project;

(b) the description of the articles to be manufactured, produced, mined or explored;

(c) the installed or designed capacity of the plant and in the case of substantial expansion of an existing plant or project the installed capacity and the proposed addition thereto;

(d) such other particulars as may be considered necessary by the proper officer for purposes of assessment under the said heading.

(4) The application shall be accompanied by the original deed of contract together with a true copy, thereof, the import trade control licence, wherever required, specifically describing the articles licensed to be imported or an approved list of items from the Directorate General of Technology Development or the concerned sponsoring authority, in the case of imports covered by Open General Licence of imports made by Central Government, any State Government, statutory Corporation, public body or Government undertaking run as a joint stock company.

(5) The importer shall also furnish such other particulars as may be required by the proper officer in connection with the registration of contract.

(6)The proper officer shall, or being satisfy that the application is in order registered the contract by entering the particulars thereof in a book kept for the purpose, assign a number in token of the registration and communicate that number to the importer and shall also return to the importer all the original documents which are no longer required by him.

7. From the combined reading of Rule 4 and 5 it is the evident that the registration of the contract for availing the benefit of Project Import has to be done on or before their importation so, the Commissioner (Appeals) finding that the registration should be done prior to import is not correct. In this case, the appellant has not effected the clearance of goods till their project at the strength of Sponsoring Authority Certificate was permitted by the Customs. Therefore, we are of the view that no violation of project import benefit has been committed by the appellant. Also the appellant was registered for benefit under project import benefit initially, after the lapse of seven and a half years. The Department can't take the stand contrary to that at the time of finalization denying the concessional rate of duty under project import. Therefore, we set aside the impugned order and allow the appeal

(Dictated and pronounced in open Court)

Sd/- Sd/-

(P.K Choudhary) (Bijay Kumar)
Member (Judicial) Member (Technical)

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