IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Appeal No. C/99/2010

(Arising out of Order-in-Appeal No.KOL/CUS/CKP/43/2010 dated 12.02.2010 passed by the Commissioner of Customs (Appeals), Kolkata)

M/s Eveready Industries India Ltd. Applicant (s)/Appellant (s)

Vs.

Commissioner of Customs (Port), Kolkata Respondent (s)

Appearance:
Shri Ravi Raghavan, Advocate and Ms. Nivedita Agarwal, CA for the Appellant (s)
Shri S.K.Naskar, AC(AR) for the Revenue (s)

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
HON'BLE SHRI BIJAY KUMAR, TECHNICAL MEMBER

Date of Hearing/Decision : 13.06.2018

ORDER NO.FO/76541/2018

Per Shri P.K.Choudhary :

Briefly stated the facts of the case is that the appellant Eveready Industries India Ltd., is engaged in the business of dry cell batteries and other goods. In 2004, they placed a purchased order with M/s Nippon Automatic Fine Machinery Co. Ltd., Japan, for import of dry cell producing line (consisting of assembly line and finishing line) for setting up Phase-I of the project at Haridwar, Uttaranchal. On receipt of the goods at port in India, the appellant assessee filed two Bills of Entry No.234775 dated 30.05.2005 and No.259374 dated 18.11.2005, for warehousing on execution of bonds. In order to avail benefit of concessional rate of duty, under Project Import Regulation (PIR), 1986, the appellant approached the Sponsoring Authority, Ministry of Commerce and Industries, Department of Industrial Policy and Promotion on 10.01.2006 for their recommendation letter for duty concession under the Project Import Scheme. The Sponsoring Authority endorsed the list of capital goods eligible for duty concession under Chapter 98.01 of Customs Tariff Act, 1975 in terms of Customs Notification No.230/86-Cus dated 03.04.1986. Thereafter, the appellant filed application for registration of contract. On scrutiny of records of the appellant, the Assistant Commissioner of Customs, vide letter dated 03.08.2006 duly registered the project under Project Import Regulation for setting up a new project at Haridwar, Uttaranchal. A PD Bond was executed and security deposit of Rs.20,02,500/-, being 2% of the CIF value was executed. Subsequently, the appellant imported machinery alongwith spare parts vide Bills of Entry No.1-120 and 1-121 both dated 24.11.2006. Show Cause Notice was issued alleging that the appellant applied for registration of the contract much after the date of importation of goods (i.e. after warehousing), which was in contravention of Regulation 5(1) of PIR. Vide Order-in-Original dated 12.11.2009, the ld. Assistant Commissioner of Customs, Kolkata passed the following Order:

"ORDER

In view of the above discussions and findings as above I pass the following order:-

(a) The importer had applied for registration on 12/6/06 almost after 6 months/11 months of the importation of the goods (June'05 and December'05). Thus the importer has not made application for registration of project contract on or before importation of the goods but much after the date of importation of the goods, which was not in conformity with the condition for registration of the project import contract, which was in contravention to the Regulation 5 (1) of PIR'86. Hence, the registration of the contract for the said imported goods was irregular which in turn resulted in availment of irregular duty concession to the extent of Rs.31,30,740/- when calculated under merit rate. Thus the demand for differential duty amounting to Rs.31,30,740/- (Rs. Thirty one lakh thirty thousand seven hundred forty only) which was short paid is confirmed under section 28 of Customs Act, 1962 and the said importer Viz. Ms

Eveready Industries India Ltd., Kolkata, is liable to pay the above duty immediately.

(b) *The amount of Rs.20,02,500/- already available with the department as security deposit vide Accounts department receipt No.M-74 dtd. 1-8-06 is hereby appropriated and adjusted against this confirmed demand. For the balance amount of Rs.11,28,240/- the said importer is directed to deposit /pay the same immediately.*

(c) *The importer is directed to deposit/pay the amount of duty confirmed within a period of 15 days from the receipt of this order, failing which the interest at the applicable rate will become payable on the said amount.*

(d) *The provisionally assessed Bills of Entry are finalized accordingly.*

(e) *This order does not take into account any suppression or mis-declaration affecting the Invoice Value that shall be dealt with appropriately under the Law and Procedure as and when detected."*

Being Aggrieved by the Order dated 12.11.2009 the appellant assessee filed the appeal before the Commissioner of Customs (Appeals) which was rejected vide the order impugned. Hence, the present appeal.

2. Ld. Advocate appearing on behalf of the appellant submits that the ld. Commissioner (Appeals) has completely ignored that Regulation 4 of PIR, which determines eligibility of the benefit, specifically provides that registration of contract have to be made before any order is made by the proper officer of Customs permitting the clearance of the goods for home consumption. He further submits that there is no time limit prescribed in the said regulation for filing of application for registration of the contract. Ld. Advocate contended that as per Rule 5 of the PIR, any importer desirous of availing the benefit of project import, shall obtain clearance from the concerned sponsoring authority. In the present case, the sponsoring authority has duly certified that the impugned goods are eligible items to be imported under Project Import. It is his submission that once the sponsoring authority has certified, the benefit cannot be denied. In support of his submission he relied

upon the following decision in the case of BSES Kerala Power Limited vs. Comm. Of Customs [2006(196) ELT 246 (Tri.-Bang.].

3. Ld. DR reiterates the order of the lower authorities.

4. Heard both sides and perused the appeal records.

5. We find that the issue in this appeal is regarding demand of customs duty on the ground that the appellant had irregularly taken duty concession under Project Import Regulation, 1986 (PIR) in as much as they have not complied with sub-clause (i) of Regulation 5 of the PIR as the contracts have been registered by the proper officer at the port after importation of the goods and warehouse.

6. We also find that as per Rule 5(2) of the PIR, any importer desiring to claim the benefit of Project Imports, shall get a clearance from the Sponsoring Authority. In the present case the sponsoring authority i.e. the Ministry of Commerce and Industries, Department of Industrial Policy and Promotion (light engineering section), had cleared/approved the project imports of the appellant for import of capital goods for essential setting up of project at Uttaranchal in terms of Customs Notification No.230/86-Cus dated 03.04.1986. This has been addressed to the Assistant Commissioner of Customs, Customs House, Kolkata and is part of the appeal paper book of pages 41,42,43 and 44.

7. We further observe that the regulation 5 is not a condition determining eligibility of the imported goods for the benefit of concessional rate of assessment under Project Regulation. It is only a procedural requirement. The importer shall apply as soon as he has obtained the clearance from the sponsoring authority under Regulation 5(2) of the PIR.

8. We also observe that there is no prescribed time limit for obtaining clearance from the sponsoring authority. This aspect has further been made clear vide para-8 of chapter-5 of CBEC's, Customs Manual. On a careful perusal of the provisions of Chapter-98 of the Customs Tariff Act, read with Regulations 4 and 5 of the Project Import Regulation, it is our considered view that the project can be registered before the goods are cleared for home consumption. In the case of Mihir Textiles Ltd. vs. Collector of Customs, Bombay [1997(92) ELT 9 (S.C.)], the Hon'ble Apex Court had examined the provisions under Chapter Heading 84.66, which laid down that the registration of contract has to be done before any order is made by proper officer of Customs permitting clearance for home consumption or deposit in warehouse. This restriction is absent in Regulations 4 and 5 of the present Regulation under Chapter Heading 98.01. Regulation 4 specifically omit what refers to the condition regarding registration being done before depositing in a warehouse and only states before clearance for home consumption. We find that both the lower authorities have not gone through the provisions carefully and had denied the benefits on incorrect interpretation of the statutory provisions. In the present case the appellants had registered the contract before clearance of the warehoused goods and hence they are eligible for the benefit of the project import.

9. In view of the above observations, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential relief.

(Operative portion of the order have already been pronounced in the open court)

S/d. S/d.

(BIJAY KUMAR) **(P. K. CHOWDHARY)**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

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