IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Customs Appeal No.76973 of 2018

(Arising out of Order-in-Appeal No.KOL/CUS(PORT)/AA/568/2018 dated 07.03.2018 passed by Commissioner of Customs(Appeals), Kolkata.)

M/s. Daruka International
(Chitragupta Nagar, P.O.Jhumritelaiya,
Dist: Koderma, Jharkhand-825409.)

...Appellant

VERSUS

Commissioner of Customs(Port), Kolkata

.....Respondent

(15/1, Strand Road, Customs House,
Kolkata.)

APPEARANCE

Shri Sanjay Jain, Advocate for the Appellant (s)
Shri A.K.Singh, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75416/2020

DATE OF HEARING : 21 January 2020
DATE OF DECISION : 05 OCTOBER 2020

P.K.CHOUDHARY :

The instant appeal has been filed by the assessee, M/s. Daruka International, against Order-in-Appeal dated 07.03.2018 passed by the learned Commissioner of Customs (Appeals), Kolkata, upholding the Order-in-Original dated 30.11.2017 passed by the learned Dy. Commissioner of Customs, Kolkata, whereby the refund claim has been rejected.

2. Briefly stated, the facts of the case are that the appellant is paying Mica Cess under Section 2 of the Mica Mines Labour Welfare Fund Act, 1946 on export of mica products. The levy of said mica cess

got repealed vide the Finance Act, 2016. It is the contention of the appellant that no mica cess is leviable on export of mica products w.e.f. 01.04.2016 whereas, the contention of the Department that the said levy got omitted only with effect from 14.05.2016 which is the date of enactment of Finance Act, 2016. The appellant filed refund claim in respect of 16 nos. of shipping bills filed after the aforesaid date, for the period from 7th April 2016 to 9th June 2016. The lower authority sanctioned refund claim in respect of shipping bills filed after 14.05.2016 and rejected those filed for the prior period. In appeal, the learned Commissioner (Appeals), upheld the decision of the original authority and relied on the decision of the Hon'ble Gujarat High Court in the case of Gujarat Paraffins Pvt Ltd. vs. UOI 212 (282) ELT 33 (Guj) by drawing the ratio laid down by the Apex Court's decision in the case of B K Industries vs. UOI 1993 (65) ELT 465 (SC).

3. Shri Sanjay Jain, learned Advocate appeared for the appellant and Shri A.K.singh, learned Authorized Representative appeared for the Revenue.

4. Heard both sides and perused the appeal records.

The short issue to be decided in this appeal is whether the appellant is eligible for refund of mica cess in respect of shipping bills filed after 01.04.2016 and before 14.05.2016. For the said purpose, it needs to be ascertained whether the date of repeal of mica cess would be 14.5.2016 i.e. the date of enactment of the Finance Act, 2016 (when the Finance Bill received the assent of the Hon'ble President) or 01.04.2016 as mentioned in an office Memorandum dated 27.7.2016 issued by the Department of Economic Affairs, Budget Division, under Ministry of Finance, Govt. of India, which has been relied upon by the appellant while pursuing the refund application.

5. It would be noteworthy to reproduce the relevant portion of the amendment introduced vide the Finance Act, 2016 as below:-

PART XVI

REPEAL AND AMENDMENT OF CERTAIN ENACTMENTS

239. Repeal and amendment of certain enactments. *— The enactments specified in the Fifteenth Schedule are hereby repealed or amended to the extent mentioned in the fourth column thereof.*

240. Savings. *— (1) The repeal by this Act of the enactments specified in the Fifteenth Schedule or amendments therein shall not—*

(a) affect any other enactment in which the repealed enactment has been applied, incorporated or referred to;

(b) affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing;

(c) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

(d) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(2) The mention of particular matters in sub-section (1) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1987), with regard to the effect of repeals.

241. Collection and payment of arrears of duties. *— Notwithstanding the repeal or amendment of the enactments specified in the Fifteenth Schedule, the proceeds of duties levied under the said enactments immediately preceding the date on which the Finance Bill, 2016 receives the assent of the President,—*

(i) if collected by the collecting agencies but not paid into the Reserve Bank of India; or

(ii) if not collected by the collecting agencies,

shall be paid or as the case may be, collected and paid into the Reserve Bank of India for being credited to the Consolidated Fund of India.

THE FIFTEENTH SCHEDULE
(See section 239)
REPEAL

Year	***No.***	***Short title***	***Extent of repeal***
(1)	*(2)*	*(3)*	*(4)*
1946	*22*	*The Mica Mines Labour Welfare Fund Act, 1946*	*Section 2.*

6. On perusal of the amendments introduced vide Section 239 of the Finance Act, 2016, it clearly appears that the same would be applicable with the date of enactment i.e. 14.05.2016 inasmuch as no stipulation has been made to provide that the same would be applicable w.e.f. 01.04.2016. By virtue of said Section 239, the enactments mentioned in the Fifteenth Schedule have been repealed (incl. the repeal of mica cess levy). This is more so in view of the specific provision made in Section 241 of the Finance Act, 2016, reproduced above, which clearly provides that the duties levied under the respective enactments (which got repealed vide Section 239) immediately preceding the date on which the Finance Bill, 2016 receives the assent of the President, if not collected shall be collected and paid into the Reserve Bank of India for being credited to the Consolidated Fund of India. This clearly affirms the position that cess applicable under the repealed Act was very much effective till the date of receipt of the Hon'ble President's assent. The same being the legal position, no contrary conclusion can be drawn on the basis of contents of Office Memorandum dated 27.07.2016 as relied by the appellant.

7. I also note that the learned Commissioner (Appeals) has rightly relied upon the Hon'ble Gujarat High Court's decision in the case of Gujarat Paraffins Pvt Ltd. (Supra), wherein the Hon'ble Court observed that the speech of the Hon'ble Finance Ministry cannot be considered to be a law unless the same is backed by the statutory provisions contained in the enacted law. The relevant portion of the decision of the High Court wherein the observation made by the Apex Court in B K

Industries (Supra) has been duly considered and followed is extracted below:

> *"25. In B.K. Industries (supra), the challenge before the Supreme Court was with regard to the validity of levy and collection of Cess under Section 3 of the Vegetable Oils Cess Act, 1983 for the period commencing from March 1, 1986 to March 31, 1987. It appears that the petitioners of that case were manufacturers of Vegetable Oil, which was subjected to Cess/Duty of excise under Section 3 of the Cess Act. The Union Minister of Finance in his Budget Speech delivered on February 28, 1986, while presenting the Budget for the years 1986-1987 made a statement, "the long term Fiscal Policy recognizes that cesses levied as excise duties contribute to the multiplicity of taxes. As an endeavour to reduce the number of these cesses, it has been decided to dispense with the cess on cotton, copra and vegetable oils. The Ministry of Agriculture will take appropriate action in the matter. The loss to the exchequer on this account will be Rs. 5.90 crores." The contention before the Supreme Court on behalf of the petitioners was that the Budget Speech of the Finance Minister delivered on the floor of the Lok Sabha constitutes an enforceable and effective decision upon which the petitioners were entitled to act. It is also submitted that the said decision was exemplified and implemented by way of a communication from the Directorate of Vanaspati, Vegetable Oils and Fats referred to above. In view of such communication, the petitioners of that case did not pass on the burden of the said cess to their purchasers on and from March 1, 1986. It was contended before the Supreme Court that it was not open to the Government to go back upon the said decision and demand cess for the period subsequent to March 1, 1986. The Supreme Court while dismissing the writ petitions took the view that the Finance Minister's Speech is not the law and that the Parliament may or may not accept his proposal. The Supreme Court in paragraph 9 held as under :*
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> > *"9. We find it difficult to agree. It is not brought to our notice that the budget proposals contained in the Finance Minister's speech were accepted by the Parliament. The cess having been imposed by a Parliamentary enactment could be rendered*

> *inoperative only by a Parliamentary enactment. Such repealing enactment came only in the year 1987 with effect from April 1, 1987. <u>Not only that the repealing Act expressly provided in section 13 that the cess due before the date of said repeal, but not collected, shall be collected according to law as if the Cess Act is not repealed. This provision amounts to a positive affirmation of the intention of the Parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act.</u> In the face of the said statutory provisions, no rights can be founded-nor can the levy of the cess be said to have been dispensed with by virtue of the alleged decision referred to in the Finance Minister's speech or on account of the letter dated August 11, 1986. The Finance Minister's speech is not law. The Parliament may or may not accept his proposal. Indeed, in this case, it did not accept the said proposal immediately but only a year later. It is only from the date of the repeal that the said levy becomes inoperative."*

8. The observation made by the Apex Court is squarely applicable to the facts of the instant case, inasmuch as the Apex Court clearly held that Section 13 in the said case (Section 241 in the instant case) expressly provided that the cess due before the date of said repeal, but not collected, <u>shall be collected according to law as if the Cess Act is not repealed</u>. This provision amounts to a positive affirmation of the intention of the Parliament to keep the said imposition alive and effective till the date of the repeal of the Cess Act. Mere reliance by the learned Advocate on the Official Memorandum dated 27.7.2016(Supra) would not come to their rescue inasmuch the same cannot override the legal position emanating from the provisions contained in the statutory enactment.

9. In view of the above discussions, I do not find any reason to interfere with the findings given by the authorities below and hence,

the impugned orders are sustained. The appeal filed by the appellant assessee is rejected.

(Order pronounced in the open court on 05 OCTOBER 2020.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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