

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

REGIONAL BENCH - COURT NO.1

Customs Appeal No.75108 of 2016

(Arising out of Order-in-Original No.KOL/CUS/PORT/COMM/31/2015 dated 16.10.2015 passed by Commissioner of Customs (Port), Kolkata.)

M/s. Nortech Power Projects Private Limited

(202, Lords, 7/1, Lord Sinha Road [Now shifted to 303 Lords, 7/1, Lord Sinha Road), Kolkata-700071.)

...Appellant

VERSUS

Commissioner of Customs (Port), Kolkata

(15/1, Strand Road, Custom House, Kolkata-700001.)

.....Respondent

APPEARANCE

Shri K.K.Sanyal, Consultant for the Appellant (s)

Shri Faiaz Ahmed, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)**

FINAL ORDER NO. 77495/2023

DATE OF HEARING : 9 November 2023

DATE OF DECISION : 9 November 2023

PER: RAJEEV TANDON:

The appellants have filed appeal against the Order-in-Original No. KOL/CUS/PORT/COMM/31/2015 dated 16.10.2015 passed by the Ld. Commissioner of Customs (Port), Customs House, Kolkata, wherein the Ld. Commissioner had directed the finalization of provisional assessment under section 18(2) of the Customs Act read with Regulation 17 of the Project Import Regulations, 1986 for the project that was registered by the appellant denying them the project imports

benefits under the said regulation, and levying merit rate of duty as applicable besides payment of interest. He also ordered enforcement of the provisional duty bond and adjustment of the Security Deposit towards differential duty liability. The Ld. Commissioner also directed confiscation of the goods for non-compliance of the post import conditions of the Project Import Regulations. He, however, gave the appellant an option of redemption and allowed the release of the said goods on payment of redemption fine and penalty imposed on the appellant under section 112(a) of the Customs Act, 1962.

2. The Appellant imported two numbers of turbines, two numbers of generators, 1 number of hydraulic unit and one number of digital tribune control i.e. spare parts for each of the two projects, got registered by them with the department to be installed at Yapak Nallah MHS and Dus Nallah MHS for initial setting up of mini hydro electric power plant. The said goods were imported vide Bill of Entry No.220762 dated 03.02.2005 under Project Import Registration (PIR) No.S-37 (P) PROJ.-02-2005-(6). It is not disputed that the said projects were meant and sanctioned by the Government of Arunachal Pradesh and were to be installed at the aforesaid sites. However, as evident from the case records, the project meant for Dus Nallah could not be executed because of flash floods and therefore another site at Teepani MHS was sanctioned by the Governor of Arunachal Pradesh and approved thereto (a place about 12 KMs away from Hayuliang Town), and appropriate order issued. The same is scanned and reproduced hereunder:-

85-99

GOVERNMENT OF ARUNACHAL PRADESH
DEPARTMENT OF POWER
ITANAGAR

ORDER

No. PERS/HPD/W-1417/2006/Pt-I Dated Itanagar, the _____ '08.

The Governor of Arunachal Pradesh is pleased to order for i) Shifting of R&M equipments from Das Nallah MHP to Tee-Pani MHP with immediate effect, considering high investment required for restoration of the project.

ii) Shifting of machines to other sanctioned projects having similar head and discharge parameters.

Sd/- (T. KONGU)
Secretary (Power),
Govt. of Arunachal Pradesh,
Itanagar.

Head No. PERS/HPD/W-1417/2006/Pt-I Dated Itanagar, 11/11/08.

Copy to:-

1. The PPS to HCM, A.P., Itanagar for information.
2. The Secretary (Power), Govt. of A.P., Itanagar for information.
3. The Chief Engineer (HPD), A.P., Itanagar. He is requested to submit survey report of the project for write off sanction.

(L.P. DALA MANDHAN)
Under Secretary (Power),
Govt. of Arunachal Pradesh,
Itanagar.

1142

Power Projects
Kolkata

3. There is ample correspondence enclosed by the appellant to demonstrate the relocation of the said project meant for Dus Nallah.

The sanction of the commissioning of the Teepani Project, with utilization of equipments imported and meant for Dus Nallah MHS, was therefore conveyed to the appellant vide letter of Executive Engineer (E/M), Tezu E-M Division, DHPD, Dist. Lohit A.P. dated 08.08.2008. It is also evident from the UO Notes enclosed with the case papers that the approval for the said shift and utilization of imported goods meant for Dus Nallah was accorded by the Minister, Finance & Tax and Excise of the Government of Arunachal Pradesh and that the said re-positioning/re-location of the Dus Nallah Project was approved by the govt. as the same was in the interest of the state and in view of the force majeure condition caused by the impact of flash floods. It is thus quite clear that the appellant had absolutely no role in the said decision making, and in no way was responsible thereto.

4. We have heard the rival submissions and perused the case records.

5. We note that there is also a letter on record dated 07.04.2015, initiated by the Chief Engineer (EM/GEN), Department of Hydro-Power Development, Itanagar and addressed to the Deputy Commissioner of Customs, Appraising Group-6, Kolkata seeking regularisation and amendment of the concerned documents registered with the department for Dus Nallah Project to the new Project venue at Teepani (2×250KW). The scanned copy of the same is reproduced hereunder for ready reference:-


OFFICE OF THE CHIEF ENGINEER (EM/GEN)
DEPARTMENT OF HYDRO POWER DEVELOPMENT
JAL VIDYUT BHAWAN; NEAR I.G PARK :: ITANAGAR

(103)

Telephone No: 0360-2217309; 0360-2291502 (Fax) e-mail: cegendhpd@gmail.com

No.CE (EM/GEN)/HPD/W-I/37/2014-15/ Dated Itanagar...../2015

To,
Deputy Commissioner of Customs
 Appraising Group (6) Arrear Cell,
 Customs House,
 Kolkata..

Sub: - Equipment imported and supplied by M/s Nortech Power Projects Ltd. For Dusnallah SHP and Shifted to Teepani SHP,

Ref: - 1. No.PWRS/HPD/W-1251/2005/453 Dated 18/01/05.

Sir,

As requested by M/s Nortech Power Projects Pvt. Ltd (Formerly Nortech Power Projects Ltd) vide their letter No.NPPPL/2014-15/154B/150 dtd 24-11-14(Copy enclosed), it is to submit that Dusnallah Project was washed out during 2004 due to flash flood. So the Govt. took a decision vide order No.PWRS/HPD/ESTD-04/2005/294 Dated 11/02/08 (Copy enclosed) to utilize and shift the same equipment (2 x 250 kW) to Teepani which had the similar head & discharge. Accordingly, the entire EM equipment of Dusnallah SHP was shifted to Teepani and subsequently commissioned at Teepani. Considering the project as a time bound PM package project, the Govt. took this initiative for better utilization of Govt. fund and for the benefits of public and for providing electricity in the villages.

In view of the above it is requested to kindly regularize/ amend the documents registered in your department for Dusnallah in the name of the new project venue i.e. Teepani (2 x 250 kW).

We look forward for your kind co-operation.

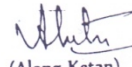
Yours faithfully,


(Along Ketan)
 Chief Engineer (EM/GEN),
 Department of Hydro Power Development,
 Itanagar.

No.CE (EM/GEN)/HPD/W-I/37/2014-15/ 39-41 Dated Itanagar...../2015

Copy to:-

1. The commissioner (P), Govt. of Arunachal Pradesh for information please.
2. M/s Nortech Power Projects Pvt. Ltd. for information. This is in the reference to your letter No. NPPPL/2014-145/154B/150 Dtd 24/11/2014


(Along Ketan) 07/4/2015
 Chief Engineer (EM/GEN) (EM/GEN)
 Department of Hydro Power Development
 Itanagar. Itanagar (A.P.)



(5)

6. Pursuant to repeated requests from the appellant for reconciliation and for reconsideration and finalization of the project import, the department however issued Show Cause Notice dated 20.10.2014, despite rendering copies of file notes of the communication regarding essentiality certificates, contract and other import related documents required to be furnished for finalizing the Project Import assessment undertaken. The importer's repeated requests for the release of the Security Deposit therefore failed to fructify. The department, with reference to the re-conciliation statement pointed out the anomalous position with regard to the project registered for Dus Nallah not being located at the given site and charged with diversion of import goods. In para 12.2 of the Show Cause Notice the department does record of the fact of shifting of the imported machinery to allegedly 'unapproved' project site and does mention the corroboration thereof by citing the letter of the Under Secretary (Power) Government of Arunachal Pradesh No. PWRS/HPD/W-1417-2006 Part-I dated 4th August 2008. The impugned para of the show cause notice is as under:

"12.2.It also appears that the above fact of shifting of imported machinery under Project Import to unapproved project site further has been corroborated by the letter No. PWRS/HPD/W-1417/2006/Pt-I dated 04.08.2008 of Under Secretary, (Power), Govt. of Arunachal Pradesh, Itanagar, (copy of which has been procured by the above mentioned Central Excise Authority during plant site verification conducted recently), which

states that the Governor of Arunachal Pradesh is please to order for (i) shifting of R & M equipments from Dus Nallah MPH to Tee-Pani MHEP with immediate effect, considering high investment required for restoration of the Project."

7. In view of the aforesaid, having taken cognizance of the factual aspect of the matter, we are of the view that in the first place issuance of Show Cause Notice in itself is grossly misplaced and misdirected. Moreover, this has been compounded by the Ld. Adjudicating Authority by adjudicating the matter against the appellants. Despite clearly taking note of the factual position, disallowing the benefit of the project import regulations and the concessional rate of duty is certainly an error of judgement.

8. We also note that the appellant has repeatedly written to the department with regard to the refund of the Security Deposit, post completion of the project and submission of the required documents. As is evident from the exchange of correspondence between the department and the importer, in respect of return of Security Deposit, it is noted that the department initially for several years took the plea of first having lost the file and thereafter has grossly delayed the matter by over 6-7 years. Claiming refund of the legitimate amount due to them, is no favour being solicited from the department but seeking back what rightly belongs to the appellant. In fact, it is clear that the appellant submitted all required documents to the department as early as on 05.05.2005.

9. We note that given the factual matrix, there is absolutely no case made out in support of the adjudication order passed by the Ld.

Commissioner. The said order is certainly without merits and therefore cannot be sustained and deserves to be set aside.

10. Under the circumstances, the impugned order is set aside. The department is directed to undertake and complete the reconciliation process within two months of the receipt of this order. It is clarified that, the fact of the trans-positioning/trans-location of the imported goods to Teepani site, for which ample correspondence have been duly made over by the appellant to the department, shall have no bearing in the finalization/reconciliation process and will not be an impediment for grant of project import benefit to the appellants if otherwise admissible. Post completion of the reconciliation process as aforesaid, the department is expected to take appropriate action for immediate release of the Security Deposit, as due to the appellants.

The appeal is allowed in the aforesaid terms.

(Operative part of the order was pronounced in the open Court.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(RAJEEV TANDON)
MEMBER (TECHNICAL)