IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. C/385/2009

(Arising out of Order-in-Appeal No. 24/2009/MCH/DC/Contract Cell/2008 dt. 15/01/2009 passed by the Commissioner of Customs (Appeals) Mumbai)

M/s. Linde India Ltd. : **Appellant**

VS

Commissioner of Customs (Import), Mumbai : **Respondent**

Appearance

Shri Shiva Nagesh, Advocate for Appellant

Shri S.R. Nair, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 23/01/2018
Date of pronouncement : 23/05/2018

ORDER NO. A/86475/2018

Per : Ramesh Nair

Brief facts of the case are that the Appellant imported goods for manufacturing of PSA Nitrogen Plant for substantial expansion of existing project of M/s India Oil Corporation Ltd., Gujarat Refinery, Baroda by registering contract under Project Import Regulations, 1986. The goods were imported under concessional rate of duty, under the provisions of Regulation 7 of the said Regulations as per which the Appellant were required to submit the required documents viz. Reconciliation statement, Bank/ Customs attested invoices, bank Remittance certificate, Installation certificate confirming installation of imported goods at the project site. On non submission of the same they were issued show cause notice dt. 16.10.97. The Appellant submitted Reconciliation statement and perpetual indemnity bond in lieu of Original Triplicate bill of entry, without the copies of invoices, bank remittance certificate, installation certificate from the Project Authority i.e Indian Oil Corporation Ltd. and copies of Bills of Entry. Vide order dt. 30.06.2006 the adjudicating authority ordered for payment of differential duty amounting to Rs.15,94,339/- and enforced bond executed towards recovery of duty on the ground that the Appellant did not meet the conditions laid down under the regulations. On an appeal by the Appellants, the Commissioner (Appeals) remanded back the matter to the adjudicating authority for giving fresh opportunity of being heard. The Appellant could not produce the copy of Bill of Entry before the adjudicating authority and requested that the chartered engineer certificate and Chartered Accountant certificate may be considered in lieu of the Bill of Entry. The adjudicating authority in absence of submission of Reconciliation statement, Bank/ Customs attested invoices, bank Remittance certificate, Installation certificate confirming installation of imported goods at the project site again confirmed the demand against the Appellant. The Appellant approached the Commissioner (Appeals) contending that all the documents were submitted and the said documents have not been placed properly by the dealing custom officer. The Commissioner (Appeals) held that in the given circumstances, the Appellant should have produced the documentary evidence by exhibiting acknowledgment copy as proof of having submitted the documents which was not done. That the Appellant in response to this had submitted that due to passage of time and labour unrest the relevant papers were not available and hence could not be furnished. The appellant inspite of opportunities, could not submit the required documents in original or the acknowledgment copy thereof to the lower adjudicating authority despite the directions of the Commissioner (Appeals) held that the demand is sustainable. Hence the present appeal by the Appellants.

2. Shri Shiva Nagesh, Ld. Counsel appearing for the Appellants submits that in show cause notice only the compliance of rule 7 was asked for which pertains to submission of statement indicating the details of the goods imported together with necessary documents as proof regarding the value and quantity of goods so imported in terms of regulation and any other documents that may be required by the proper officer. That the reconciliation certificate was submitted on 7.04.2006 which contained details of all the Bills of Entry alongwith the Tokka No/ IGM No., the name of vessel importing the subject goods, the description of the goods imported, the quantity and assessable value thereof. Due to labour unrest at their office, they could not produce the copies of bills of entries. The payment certificate is not available with them. They have submitted the certificate by the Chartered Engineer certifying the installation of goods and certificate of the Chartered Accountant, certifying that entire payment has been made to vendors for supply of the materials against three purchase orders and no amount is outstanding as per the Bank reconciliation certificate. As per the CBEC instruction

manual an importer is required to submit reconciliation certificate from a registered chartered engineer certifying the installation of each of the imported items of machinery. They have complied with both the condition in as much as they have submitted the reconciliation statement as well as Chartered Engineer Certificate. He also relies upon the orders in case of CCU (Imports) Vs. Elecon Engineering Co. Ltd. 2011 (268) ELT 20 (BOM), Alstom projects India Ltd. 2014 (306) ELT 522 (TRI), Creative Indus (Rajahmudry) P. Ltd. 2012 (282) ELT 349 (AP).

3. Shri S.R. Nair, ld. AR (AC) reiterates the findings of the impugned order and submits that in absence of submission of required documents, the exemption from duty is not available to the Appellants.

4. We have heard both the sides and perused the records. We find that in terms of Regulation 7 of the Project Import Regulations, 1986 the importer has to submit a statement indicating the details of the goods imported together with necessary documents as proof regarding the value and quantity of the goods so imported and any other documents that may be required for finalization of contract. We find that the Appellant had submitted the reconciliation statement. Further the Chartered Engineer Certificate was also submitted which showed that the imported goods has been installed for the intended purpose. The installation of goods is of prime importance as the goods should be used for the intended project. In the present case the same has not been disputed by the revenue. Further the reconciliation

statement gives all the details of the documents/ Bill of Entry even though the same was not submitted. The Appellant had requested for permitting reconstructed copy to be produced which was not granted. The reconciliation statement, installation certificate towards installation of goods which is of prime importance and the certificate of Chartered Accountant certifying the remittance of consideration of imported goods are ample proof of compliance with the Project import Regulations. Even the Hon'ble High Court of Andhra Pradesh and the Tribunal in cases supra has granted the benefit of concessional rate of duty in somewhat similar circumstances. We are thus of the view that the Appellant are entitled for the benefit of concessional rate of duty and the duty demand is not sustainable against them. We thus set aside the impugned order and allow the appeal with consequential reliefs.

(Pronounced in court on 23/05/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.