IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. C/271/2012

(Arising out of Order-in-Original No. 182/MCH/DC/Gr.VA/2012 dated 12.03.2012 passed by Commissioner of Customs (Appeals), Mumbai-I)

Commissioner of Customs (I), Mumbai **Appellant**

Vs.

Vijai Infrastructure Ltd. **Respondent**

Appearance:

Shri Rakesh Kumar, Assistant Commissioner (AR), for appellant
Shri P. Patankar, Consultant, for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 21.01.2019
Date of Decision: 21.01.2019

ORDER No. **A/85153/2019**

Per: Dr. D.M. Misra

This is an appeal filed by the Revenue against order-in-appeal No. 182/MCH/DC/Gr.VA/2012 dated 12.03.2012 passed by Commissioner of Customs (Appeals), Mumbai.

2. Briefly stated the facts of the case are that the respondent has filed a Bill of Entry No.909748 on

1.9.2009 for clearance of the imported goods purchased on high seas sale basis, declaring the same as "Electronic Sensor Paver Vogele – Model Super 1800-2 with AB 600-2 TV screen for laying bituminous pavement upto 9 meter width" claiming exemption Notification No.21/2002-Cus. dated 1.3.2002. On examination, since it was found that the imported machine having minimum pavement width of 3 meters, whereas the minimum width of pavement required 7 meters to qualify for the benefit of Notification No.21/2002-Cus. dated 1.3.2002 (serial No.230), demand notice was issued proposing denial of the benefit of the said notification and recovery of duty short paid. On adjudication, demand of duty of Rs.26,58,075/- was confirmed denying the benefit of Notification No.21/2002-Cus. dated 1.3.2012. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals) who, in turn, allowed their appeal. Hence, the Revenue is in appeal.

3. It is the contention of the learned AR for the Revenue that the learned Commissioner (Appeals) has erred in observing that the paver should be capable of laying of 7 meters in order to claim the benefit. She has observed that since the machine imported by the appellant is capable of doing the same with some

conditions of bolt-in extensions, therefore, the benefit of Notification No.21/2002-Cus. is admissible to the respondent. The learned AR has further submitted that the issue of eligibility of the said Notification No.21/2002-Cus., in relation to identical machine, has been decided by the Larger Bench of this Tribunal in the case of *CC(I), Mumbai vs. Ramky Infrastructure Ltd. – 2014 (306) ELT 525 (Tri.-LB)*.

4. Learned Consultant for the respondent, on the other hand, submitted that the present appeal is beyond the scope of the notice issued to them. Therefore, the same cannot be accepted.

5. Heard both sides and perused the records.

6. There is no dispute of the fact that the goods imported by the respondent has been described in the Bill of Entry as "Electronic Sensor Paver Vogele – Model Super 1800-2 with AB 600-2 TV screen for laying bituminous pavement upto 9 meter width", whereas on examination, the same was found to be that the machine is capable of laying bituminous pavement of 3 meters only. It is also not in dispute that only with addition of bolt-in extensions, i.e. with accessories, the machine could be capable of laying bituminous pavement of 7 meters and above. We find that identical

issue has been considered by the Larger Bench of this Tribunal in *Ramky Infrastructure Ltd.* (supra) case, wherein it is observed as follows:-

> *"**8.** Now, the issue before us is whether the machines in question fulfil the criteria laid down under the Notification. The only contention of the present respondents is that with the addition of bolt-in extensions, the machine in question is capable of laying bituminous pavement of 7 meters size and above. From the purchase order and from the packing list, we find that the accessories i.e. bolt-on extensions were separately ordered. In a situation when bolt-on extensions are not imported, the relevant question would then be whether the machines still qualify for exemption under Notification 21/2002. Certainly, the benefit of the Notification is not available to such machine. In other instance, when the machine has been imported with accessories, whether the benefit of the Notification is available. The mere import of the accessories with the machine cannot change the basic character of the machine. As per the Webster New International Dictionary, accessory is 'an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else'. We find that the machine in question is complete in itself without the accessories.*
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> ***9.** A Notification is to be interpreted strictly as held by the Hon'ble Supreme Court in the case of Novopan India Ltd. (supra). The Hon'ble Supreme Court held as under:-*
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> > *"18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in*

favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [1978 (2) E.L.T. (J350) (S.C.) = 1969 (2) SCR 253] that such a Notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

10. *In the present case, as we find that as per the product literature, the machines in question are capable of laying bituminous pavement from 3 meters to 6 meters i.e. less than 7 meters, therefore we find no reason to take a different view as in the case of Gammon India Ltd. (supra). The matter be placed before the regular Bench for further necessary orders."*

7. Following the aforesaid precedent and also the principle of law laid down by the Hon'ble Supreme Court in the case of *CC(I), Mumbai vs. Dilip Kumar & Co. – 2018 (361) ELT 577 (SC)* observing that the exemption notification should be interpreted strictly and the burden heavily rests on the assessee who claims the

exemption to establish that their case falls within the four corners of the notification, we are of the view that the learned Commissioner (Appeals) has erred in extending the benefit of Notification No.21/2002-Cus. dated 1.3.2002 (serial No.230).

8. Consequently, the impugned order is set aside and the Revenue's appeal is allowed.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

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