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

APPEAL Nos. C/714/2010,98/2011

(Arising out of Orders-in-Appeal No. 41 to 42 (Gr.VB)/2010(JNCH/IMP-36 to 37 dated 28.7.2010 and No. 51 (Gr.VB)2011(JNCH)IMP-35 dated 03.02.2011 passed by Commissioner of Customs (Appeals), JNCH, Nhava Sheva)

Satelec India Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs (Imp.), Nhava Sheva **Respondent**

Appearance:

Shri Ravinder Jain, Consultant, for appellant
Shri K.M. D'Souza, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Date of Hearing: 29.01.2019
Date of Decision: 29.01.2019

ORDER NO. **A/85947-85948/2019**

Per: S.K. Mohanty

Denial of duty exemption provided under Notification Nos. 58/2008-C.E. dated 07.10.2008 and 24/2010 dated 27.02.2010 is the subject matter of present dispute. Since common issue is involved in both these appeals, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that the appellant had imported “X-Mind DC 230VCL 800SAT” and filed Bills of Entry No.945306 dated 16.06.2009 and 918171 dated 29.05.2009 for the purpose of assessment. The appellant had paid CVD @ 8% under Notification No.002/2006-C.E. dated 01.03.2006. Later on, the appellant had realized that its case should be governed under the amended Notification No.58/2008-C.E. dated 07.10.2008, whereunder the goods falling under CTH 9022 were chargeable to CVD @ 4%. Since the said Bills of Entry were assessed as per the rate of CVD provided under Notification dated 01.03.2006, the appellant had preferred appeal before the Commissioner (Appeals). Similarly, in respect of importation of the said goods, the appellant had filed Bill of Entry No.943397 dated 17.03.2010, without claiming the benefit of Notification No.20/2006-C.E. dated 01.03.2006 as amended by Notification No.24/2010 dated 27.02.2010, whereunder Special Additional Duty (SAD) applicable to “goods required for medical, surgical, dental and veterinary use” was ‘nil’. However, the said Bill of Entry was assessed, charging SAD @ 4%. The appellant also preferred appeal against the assessment of the Bill of Entry before the Commissioner (Appeals). Both the appeals filed by the appellant were disposed of vide the impugned orders dated 28.07.2010

and 03.02.2011 by the learned Commissioner (Appeals), Mumbai, in upholding the assessment orders and rejecting the appeals filed by the appellant.

3. Learned Consultant appearing for the appellant submitted that the benefit provided under the Notifications dated 07.10.2008 and 27.02.2010 should be available to the appellant inasmuch as the said Notifications were in vogue at the time of importation of the goods. He further submitted that since no specific conditions have been prescribed for claim of concessional rate of CVD/nil rate of SAD, the learned Commissioner (Appeals) has erred in rejecting the appeals filed by the appellant.

4. On the other hand, learned AR appearing for Revenue reiterated the findings recorded in the impugned order and further submitted that since based on the declaration filed by the appellant, the Bills of Entry in question were assessed by the department, duty exemption claimed subsequently cannot be available and accordingly, the learned Commissioner (Appeals) has rightly rejected the appeals filed by the appellant.

5. Heard both sides and perused the records.

6. The imported goods, in question, were assessed under sub-heading No.90221300 of the CTH, which reads as “other for dental uses”. Serial No.30 of the Table appended to Notification No.10/2006-CE dated 01.03.2006 vide column (4) has substituted the rate of duty from 8% to 4% by Notification No.58/2008-C.E. dated 01.02.2008. Further, the Table appended to Notification No.20/2006-Cus. dated 01.03.2006 though has prescribed 4% SAD for the goods required for medical, surgical, dental or veterinary use under heading No.9022 of the CTH, but the said base Notification was amended vide Notification No.24/2010-Cus. dated 27.02.2010, prescribing the rate of SAD as nil. In both the cases, the goods were imported by the appellant after issuance of the amending Notifications dated 07.10.2003 and 27.02.2010. The Assessing Officer at the time of assessment of the Bill of Entry had not extended the duty benefit provided under the said Notifications. Thus, in our considered view, the appellant had appropriately filed the appeal before the learned Commissioner (Appeals) for extending the benefit provided under the said Notifications. The fact is not under dispute that the duty exemption/concessional rate of duty provided under the said Notifications were not subjected to fulfilment of any condition by the importer of the goods. Since the

exemption has been provided for the goods falling under CTH 9022, the benefit should also be available to the appellant.

7. In view of above discussions, we do not find any merits in the impugned orders, denying the benefit of Notifications dated 07.10.2003 and 27.02.2010 (supra) to the appellant. Accordingly, after setting aside the same, we allow the appeals in favour of the appellant.

(Pronounced in court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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