CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
REGIONAL BENCH-COURT NO. : 5 ROOM NO. : 505

Custom Appeal No. 982 of 2010

(Arising out of Order-in- Appeal No. 126/NCH/AC/ CRARS/2010 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I.)

M/s Stroytransgaz ... **Appellant**
(Old Address)
C-43, Anand Niketan,
New Delhi-110021.

(Present Address)
M/s Stroytransgaz
Block CP-15, Dr. P. House, Rizal Marg,
Chanakya Puri,
New Delhi, 110021
India

versus

Commissioner of Customs (Appeals), ***...*Respondent**
Mumbai Zone-I, New Custom House, Ballard
Estate, Mumbai-400 001

Appearance:

Shri Neerav R. Mainkar, Advocate for appellant

Shri R. Kumar, Assistant Commissioner (AR) for respondent

CORAM: Hon'ble Mr. C J Mathew, Member (Technical)
Hon'ble Mr. Ajay Sharma, Member (Judicial)

FINAL ORDER NO: A/85970 / 2019
Date of hearing: 18/12/2018
Date of decision: 18/04/2019

PER: AJAY SHARMA

The present Appeal has been filed from the impugned order dated 26.10.2010 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I, in Order-in-Appeal No. 126/NCH/AC/ CRARS/2010.

2. The facts leading to the filing of the instant appeal are as follows: the Appellants, having been awarded contract for *'Dahej Uran Pipeline Project'* by M/s. Gas Authority of India Ltd. (GAIL), procured imported goods for execution on lease bars for which the Bill of Entry was filed on 02.08.2006 and assessed on 15.09.2006. The imported goods were cleared for home consumption on payment of Customs Duty @ 15% amounting to Rs.25,41,614/- paid in cash on 18.9.2006 and 85% by Bank guarantee in accordance with the Customs Notification No.27/2002-Cus. dated 01.03.2002. Since the work continued, the Appellant, in accordance with the aforesaid notification dated 01.03.2002, paid further customs duty @ 15 percent amounting to Rs.24,41,614/- with interest of Rs.1,70,253/- on 27.2.2007. As there was further delay in re-export of the goods, the Appellants vide letter dated 17.07.2007 to the Customs Authorities, requested for extension of re-export bond period. In reply to the said letter dated 17.07.2007, the Customs Authority informed the Appellant that they should either give proof of re-export within the time limit (02.09.2007) or to pay the duty alongwith applicable interest. The goods were admittedly re-exported on 23.08.2007 and the same was communicated by the Appellant to the customs department vide letter dated 08.09.2007 with request to cancel the Bond and the Bank Guarantee submitted at the time of import. The customs department vide letter dated 17.03.2008 informed the appellants that since the conditions of aforesaid notification were not complied with because of delay in re-export, they have to pay

differential customs duty alongwith applicable interest within 7 days failing which action would be taken to safeguard the revenue. They also wrote letter to the Appellant's banker, demanding immediate encashment of their Bank Guarantee. The Appellants paid the differential Customs duty @ 70% amounting to Rs.1,18,60,866/- alongwith interest of Rs.27,53,996/- on 29.03.2008.

3. Learned counsel for the Appellants submitted that date of import has to be the date of actual import which is 15.09.2006 and not 02.08.2006 i.e. the date on which the Bill of Entry is filed by the importer and since the imported goods were re-exported after 6 months but within one year of the date of import, they were liable to pay only 30% of the aggregate of the duties of customs leviable and not 100% of the aggregate of customs duty as demanded and paid by them. They therefore asked for the refund of differential duty of 70% plus interest total amounting to Rs.1,46,14,862/- erroneously paid by them as per section 27 of the Customs Act, 1962. It is the case of the appellants that they had re-exported the consignment on 23.08.2007 whereas the Asstt. Commissioner, Customs vide letter dated 31.07.2007 had directed them to re-export the consignment by 02.09.2007, which is well within the time limit i.e. specific date granted by the Customs department itself. He also relied upon the CBEC's circular No.14/97 dated 03.06.1997 which was issued with respect to the Notification No.158/95-cus dated 14.11.1995 and which clearly says that for the purpose of computing the period of 6 months or one year, the date actual

clearance of goods, should be taken as date of import and not the date on which the bill of entry was filed by importer. According to ld. Counsel the said circular dated 03.06.1997 is equally applicable to the notification No. 27/2002 dated 01.03.2002 also and therefore the period of one year has to be counted from 15.09.2006 within the re-export. The learned Authorised Representative appearing on behalf of Revenue reiterated the findings recorded in the impugned order and prayed for dismissal of Appeal filed by the Appellants. He also submitted that Circular dated 03.06.1997 has no application on the Notification No. 27/2002 dated 01.03.2002.

4. Sub-section (1) of Section 15 of the Customs Act, 1962 states that the rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force. In the case of goods entered for home consumption under Section 46, on the date on which a bill of entry in respect of such goods is presented under that section and in the case of goods cleared from a warehouse, the date stipulated vide clause (b) of sub-section (1) of Section 15. In Bharat Surfactants Pvt. Ltd. and another v. Union of India and others- 1989 (3) SCR 367, a Constitution Bench of the Hon’ble Supreme Court had laid down that the rate of duty and tariff valuation applicable to the imported goods is governed by Clause (a) of Section 15(1) of Customs Act. In the case of goods entered for home consumption, it is the date on which the Bill of Entry in respect of the goods is presented under that Section which is relevant. The similar views have been expressed by the Hon’ble Supreme

Court in Garden Silk Mills Ltd. Vs. UOI, 1999(113) ELT 358 (SC). The Hon'ble Court has held that "the import of goods into India would commence when the same cross into the territorial water but continues and is completed when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the Customs barriers and the bill of entry for home consumption is filed".

5. The issue before us is whether for the purpose of computing the period of 6 months or one year, the date of actual clearance/import of goods should be taken as date of import or the date on which the Bill of Entry was filed by the importer. The Notification, against which the import was effected, provides for duty concessions on "Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975" taken on lease by the importer for use after importation subject to the importer making a declaration at the time of import that the goods are being imported temporarily for execution of a contract and the said goods are re-exported within six months of the date of importation or within such extended period not exceeding one year from the date of importation. The concessional rate of duty prescribed is 15% of the aggregate of the duties of customs, which would be leviable, in case of goods which are re-exported within six months of the date of importation. In case, the goods which are re-exported after six months, but within one year of the date of importation, the rate of duty chargeable would be 30% of the aggregate of the duties of customs. Therefore, the

eligibility for partial exemption is dependent on the period of retention by the importer.

6. Though the goods were entered for export on 23.08.2007 as per shipping bill, the permission for export is extended only on 01.09.2007. As the goods could have been cleared on import only after paying customs duty, the earliest such is 18.09.2006 and with depositing of 30% of the aggregate duties of customs, the importer was eligible to retain the goods for one year. In determining of one year, the original authority and appellate authority seem to have gone by date of filing of bill of entry even though the notification is silent on that.

7. We are unable to agree with that assumption since the only provision that refers to relevant date for import is in Section 15 but that is for the limited purpose of determining rate of duty or tariff valuation. For other purposes, the general understanding of importation should apply. Goods cease to be treated as imported once they are cleared for home consumption. The date on which that happens should apply for determination of relevant date when the notification does not prescribe relevant date. We are also guided by the fact that appellant is entitled to drawback. There is, therefore, no reason to deny them the benefit of duty exemption as goods have been re-exported within one year from the date of clearance.

7. In view of the discussions made hereinabove, the Appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 18/04/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/sb*