CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 85261 OF 2019

[Arising out of Order-in-Original No: 19/2018-19/RCB/CC (X) dated 27th September 2018 of Commissioner of Customs (Export), New Custom House, Mumbai – I.]

GE T & D India Ltd
Milestone 87, Vadodara-Halol Highway
Kotambi Vadodara, Gujarat - 391510 … ***Appellant***

versus

Commissioner of Customs (Export)
New Custom House, Ballard Estate, Mumbai - 400001 …***Respondent***

APPEARANCE:

Shri Udit Jain, Advocate with Ms Akanksha Dikshit, Advocate for the appellant

Shri Ramesh Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 87323/2021

DATE OF HEARING: 13/12/2021
DATE OF DECISION: 13/12/2021

PER: C J MATHEW

The limited, but extirpitive, plea of Learned Counsel for the appellant, M/s GE T & D India Ltd, in this challenge to order-in-original no. 19/2018-19/RCB/CC (X) dated 27th September 2018 of Commissioner of Customs (Export), New Custom House, Mumbai, in which 'old and used machinery', imported against bill of entry no. 3529909/14.10.2013, had been denied the benefit in notification no. 104/2009-Cus dated 14th September 2009 available under 'status holders incentive scrip (SHIS)' scheme of the Foreign Trade Policy for being contrary to the objective of promoting investment in upgradation of technology, is that the justification for initiation of the proceedings had since been erased out of existence.

2. The machinery, valued at ₹ 6 8927024, was denied the benefit of exemption of ₹ 1,77,87,692/- from duties of customs which was ordered to be recovered under section 28 of Customs Act, 1962, along with interest thereto under section 28AA of Customs Act, 1962, besides being confiscated under section 111 (o) of Customs Act, 1962 along with consequent penalties under section 112 and section 114A of Customs Act, 1962. The show cause notice dated 19th January 2018 was prompted by the communication of Director General of Foreign Trade circulated to all designated subordinate officers, in letter no. 01/61/180/49/AM 14/PC 3/70 dated 28th April 2014 and responding to M/s Bharat Forge Ltd, that the objective of the said scheme precluded import of 'second-hand capital goods' by beneficiaries.

3. Learned Counsel drew further attention to the relevant

notification which does not bar imports solely for being 'old and used' and furnished Office Memorandum dated 13th June 2018 issued from F no. 01/61/180/49/AM 14/PC 3 of the Directorate General of Foreign Trade to the Central Board of Indirect Taxes & Customs intimating that

> *'2. In this regard, it is clarified that the FTP/HBP pertaining to the SHIS Scheme did not specifically bar import of second-hand capital goods.*
>
> *3. In the absence of any legal backup under the provision of FTP/HBP to deny import of second-hand capital goods under SHIS Scrips, the clarification provided earlier by this Directorate vide F. no. 01/61/180/49/AM 14 dated 28th April 2014 may be treated as withdrawn.'*

4. It is informed by him that, even though the proceedings consequent upon show cause notice was taken up after the withdrawal of the clarification, they were unaware of it until public notice no. 15/2018 dated 1st August 2018 issued by Commissioner of Customs, Mangaluru was belatedly brought to their notice and were able to secure a copy in March 2019 by resort to Right to Information Act, 2015.

5. Learned Authorised Representative reiterated the circumstances in which the proceedings were commenced and concluded.

6. We find that the sole ground for denial of the exemption

benefits flowing from notification no. 104/2009-Cus dated 14th September 2009 was the clarification issued by the policy authority in April 2014. The Office Memorandum *supra* withdrew that clarification which, though addressed to the Central Board of Indirect Taxes & Customs, did not, very strangely, appear to have made its way to the office of the respondent herein. Suffice it to say that the recovery of duty foregone and the several detriments under section 111, 112 and 114A of Customs Act, 1962 in the impugned order are, thereby bereft of legal support.

7. Consequently, we set aside the impugned order and allow the appeal.

(Operative Part of the Order pronounced in the open court on 13th December 2021)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*