

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL, MUMBAI**

REGIONAL BENCH - COURT NO. I

**Customs Appeal No. 87479 of 2016**

(Arising out of Order-in-Appeal No. MUM-CUSTOM-SIMP-74/2016-17 dated 15.07.2016 passed by the Commissioner of Customs (Appeals), Mumbai Zone-I)

**M/s National Fertilizers Ltd.**

**.... Appellant**

Versus

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

**.... Respondent**

Appearance:

Shri R. Krishnan, Advocate for the Appellant

Shri Sydney D'Silva, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)**

**HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. A/86073/2023**

Date of Hearing: 28.06.2023

Date of Decision: 28.06.2023

***Per: S.K. Mohanty***

This appeal is directed against the impugned order dated 15.07.2016 passed by the learned Commissioner of Customs (Appeals), Mumbai Zone-I, wherein he has upheld the original order dated 15.01.2015 passed by the Deputy Commissioner of Customs. In the original order, the final assessment of the Bills of Entry no. 3316 dated 09.01.1996 was finalized and the importer-appellant was directed to pay the duty amount of Rs. 1,36,70,595/-. Further the said original order has also finalized the remaining Bills of Entry by providing the benefit of NIL rate of duty by classifying the same under CTH 98.01 of the Customs Tariff Act, 1975. The contract in respect of the project import was also finalized by the Department vide the Order-in-Original dated 15.01.2005. Feeling aggrieved with

the impugned order passed by the learned Commissioner (Appeals), the appellant preferred this appeal before the Tribunal.

2. Learned advocate appearing for the appellant submitted that the bill of entry dated 09.01.1996 has already been finalized by the Department earlier. In this context, he has referred to paragraph 4 of the Order-in-Original dated 15.01.2015 to state that the said duty amount of Rs. 1,36,70,595/- has already been sought to be recovered from the appellant through issuance of show cause notice dated 07.01.1998 and that the said show cause notice was adjudicated by the Commissioner of Customs vide order dated 17.04.1998 in dropping the proposal made therein. Thus, he submitted that as regards paragraph 8(a) of the original order is concerned, the demand cannot be sustained against the appellant, since the Bills of Entry were not provisional and were finalized way back in 1998. The learned advocated submitted that since the alleged duty demand has already been set aside by the Commissioner of Customs vide order dated 17.04.1998, the Department cannot agitate the matter subsequently for recovering the duty amount from the appellant. In this context, learned advocate also submitted that the order dated 17.04.1998 has attained finality in view of the dismissal of appeal by the Tribunal for non submission of clearance from the Committee on Disputes (CoD) functioning under the ultimate control of Cabinet Secretary.

3. On the other hand, learned AR appearing for the Revenue reiterated the findings recorded in the impugned order. He further submitted that since the alleged duty demand of Rs. 1,36,70,595/- related to some other issue and not concerned with finalization of the provisional assessment, the duty demand confirmed in the original order dated 15.01.2015 sustains and the appellant is liable to pay such demand confirmed in the adjudication order.

4. Heard both sides and examined the case records.

5. Paragraph 4 in the original order dated 15.01.2015 is relevant for consideration of the further dispute and the said paragraph is reproduced herein under:-

"4. The Commissioner of Customs (Import), NCH, Mumbai, had issued a Show Cause Notice (SCH) vide F. No. DRI/BZU/B/58/97 dated 07.01.1998 to the importer. In the said SCN, it was mentioned that: M/s. NFL had imported a 'Demag All Terrain Crane' valued at Rs.3,64,54,922/- vide Bill of Entry No.3316 dated 09.01.1996 and cleared the same as capital goods at Nil rate of duty by claiming benefit of Project Import read with Notification No.90/1994-Cus & 91/1994-Cus both dated 01.03.1994 for use in substantial expansion of their Vijaipur Fertilizer Project. However, the said crane was intended basically for maintenance of the fertilizer plant of M/s. NFL at Nangal. But since requisite funds were not available with Nangal Plant, the said crane was imported as auxiliary equipment required for substantial expansion of Vijaipur Plant of M/s. NFL, after manipulating the Essentiality Certificates and by claiming benefits of Notification No.90/1994-Cus & 91/1994-Cus.. Duty of Rs.1,36,70,595/- was demanded from the importer. The said SCN was disposed of by the Commissioner of Customs (Import) vide Order-in-Original No. 80/98/CAO/CC/MGV dated 17.04.1998 whereby all the charges levelled against M/s. NFL and its Executive Directors were dropped. The said Order-in-Original was reviewed by the Central Board of Excise & Customs (Board) vide Order No.97-R/99 dated 16.04.1999 and Commissioner of Customs (General), NCH, Mumbai was directed to file appeal before the CESTAT. Accordingly, appeals were filed before the CESTAT, Mumbai by Commissioner of Customs (General). The CESTAT, Mumbai, vide order No. A/649/WZB/05CI dated 27.06.2005, dismissed the appeal against M/s. NFL for want of clearance from the Committee on Disputes (CoD), with liberty to Revenue to apply for restoration of appeals, in the event of grant of clearance from the COD. The appeal against the Executive Director of M/s. NFL was dismissed by the CESTAT vide Order No. A/653/WZB/05/CI dated 27.06.2005 for lack of sufficient grounds in the Appeal Memo, for justifying penal action."

On perusal of the observations made by the original authority vide order dated 15.01.2015 (quoted above), we find that in respect of the Bill of Entry No.3316 dated 09.01.1996, the Department had initiated show cause proceedings seeking recovery of the said amount and the show cause notice in this regard was adjudicated by the Commissioner of Customs (Import) vide Order-in-Original No.80/98/CAO/CC/MGV dated 17.04.1998 in dropping of the charges levelled in the show cause notice against the appellant. Though the said adjudication order was appealed against by the Revenue before the Tribunal, but the appeal of Revenue was dismissed for want of clearance from the Committee on Disputes (CoD) vide order dated 27.06.2005 passed by the Tribunal in Appeal No. C/625/99.Mum. Though the liberty was granted to Revenue to apply for restoration of appeal in the event of grant of clearance from the CoD but as on

date nothing is available on record to show that Revenue has obtained necessary clearance from the Committee on Disputes to pursue the matter before the Tribunal. So far as the duty demand of Rs.1,36,70,595/- is concerned, the issue cannot be agitated for recovery from the appellant inasmuch as the said amount already proposed for recovery in the show cause notice issued in the year 1998 has attained finality and the said proposed demand was dropped by the adjudicating authority, we are of the considered view that the original order confirming duty demand of Rs.1,36,70,595/- and subsequently upheld by the learned Commissioner (Appeals) by the impugned order cannot be sustained and stand for judicial scrutiny.

6. In view of the foregoing discussions, we do not find any merit in the impugned order passed by the learned Commissioner (Appeals). Therefore, the appeal filed by the appellant is allowed.

(Order dictated and pronounced in open court)

**(S.K. Mohanty)**  
**Member (Judicial)**

**(M.M. Parthiban)**  
**Member (Technical)**

Sinha