CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPLICATION (EH) NO: 85274 OF 2023
(on behalf of appellant)
IN
CUSTOMS APPEAL NO: 86304 OF 2022

[Arising out of Order-in-Appeal No: MUM-CUS-KV-IMP-205/2021-22 NCH dated 31st March 2022 passed by the Commissioner of Customs (Appeals), Mumbai – I.]

Louis Drefus Company India P Ltd
8th Floor, Tower A, Building No. 5, DLF Cyber City
DLF Phase 3, Gurgaon, Haryana - 122002 … ***Appellant***

versus

Commissioner of Customs (Import –II)
New Customs House, Ballard Estate,
Mumbai - 400001 ***…Respondent***

APPEARANCE:

Ms Shamita Patel, Advocate for the appellant

Mr Ram Kumar, Assistant Commissioner (AR) for the respondent

CORAM:

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

FINAL ORDER NO: 87149/2023

DATE OF HEARING: 16/11/2023
DATE OF DECISION: 16/11/2023

This application, seeks 'out-of-turn' disposal of appeal no. C/86304/2022 against order[1] of Commissioner of Customs (Appeals),

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[1] [order-in-appeal No. MUM-CUS-KV-IMP-205/2021-22 NCH dated 31st March 2022]

Mumbai – I.

2. Learned Counsel for the applicant submitted that the issue stands covered by the decision of the Hon'ble High Court of Bombay in *LA Tim Metal & Industries Limited v. Union of India and Ors. [2022 (11) TM 1099 – HOMBAY HIGH COURT]* which has been followed by the Tribunal in other decisions.

3. Learned Authorized Representative was heard at length.

4. Considering the submissions made, this application is allowed.

5. As the issue in dispute is limited to an aspect of duty payment which stands settled by judicial determination, as well as a circular of the Central Board of Indirect Taxes & Customs (CBIC), pertaining to discharge of cess in the import of duty-free goods, with the consent of both sides, the appeal is thereof taken up for disposal.

6. Learned Counsel for appellant and Learned Authorized Representative have been heard.

7. It would appear that demand had been raised for discharge of 'education cess' and 'secondary & higher education cess' that had been debited against scrip issued under the Merchandise Exports from India Scheme (MEIS) in the Foreign Trade Policy (FTP). It would also appear that the objection was primarily to debiting of the scrip for discharge of cess in the absence of specific provision in the policy for

such payment or in the relevant notification. It would also appear that the impugned order have not taken note of the decisions of the Hon'ble Bombay High Court in *re LA Tim Metal & Industries Limited*.

8. In terms of the decision of Hon'ble High Court of Bombay in *re LA Tim Metal & Industries Limited,* it would appear that the proposal for recovery itself was flawed inasmuch as any cess collectible as percentage of duty liability, and which is exempted thereof under any notification, could not be computed in the absence of any duty liability. It is also on record that circular no. 3/2022 dated 1st February 2022 of Central Broad of Indirect Taxes & Customs (CBIC) relates to 'social welfare surcharge' and it is quite likely that lack of specific reference to this surcharge precluded acceptance of the submission in the impugned order. The Hon'ble High Court of Madras in *KTV Health Food P Ltd v. Commissioner of Customs (Preventive), Tiruchirappalli [2021 (10) TMI 119 – MADRAS HIGH COURT]* had held that

> *'25. When that being the statutory declaration made by the Act of Parliament ie., The Finance Act, 2004 and 2007, we cannot have any different view to state that there were different components. What is the duty to be imposed on the imported goods first be calculated and accordingly, 2% of education Cess and 1% of secondary and higher education cess shall be levied and imposed. Hence, when the importer pay-the duty, he shall also pay the cess which become part and parcel of the duty of*

customs. That is the reason why the total amount of ₹ 22,88,86,212/- were paid by the petitioner as duty of customs as well as education cess through the scrips of MEIS. Having accepted the same, though subsequently, in view of the notifications, if the Customs Department come forward to take a stand that the mode of payment of the education cess even though being part of the customs duty. shall not be on the same line by using the scrip, such kind of payment can be insisted upon, provided only in future cases and not in the cases where it has already been paid and where the goods have been cleared. This was exactly been made in execution by Circular No:2/2020 dated 10.01.2020.

26. When such a circular was issued by the Customs Department and the same having been implemented in respect of various people like the petitioner, the benefit of the said circular cannot be denied to the petitioner on the alleged reason that, the education cess or the higher and secondary education cess being a different component cannot be treated as customs duty or additional customs duty and therefore, the benefit conferred under Clause 11 of the said circular cannot be made available to the petitioner. The said view taken by the respondent / Customs Department, in the considered opinion of this Court, in view of the aforestated legal position, is untenable and unacceptable.'

9. In view the decisions cited *supra* and the clarification of Central Board of Indirect Taxes & Customs (CBIC), nothing survives in this matter and, accordingly, the impugned order is set aside and appeal allowed.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*