

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

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 86711 Of 2022

(Arising out of Order-in-Appeal No. 372 & 373 (Gr.V)/ 2022 (JNCH)/Appeals dated 04.05.2023 passed by Commissioner of Customs (Appeals), Mumbai Zone-II)

**M/s Delhi Metro Rail Corporation
Ltd**

.....Appellant

8th Floor, 1/A Wing, MMRDA Building, Bandra
Kurla Complex, Bandra, Mumbai-400 051.

VERSUS

**Commissioner of Customs,
Nhava Sheva-V**

.....Respondent

JNPT, Custom House, Nhava Sheva, Raigad,
Maharashtra-400 707.

WITH

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Maharashtra-400 707.

Appearance:

Shri Sanjay Singhal, Advocate for the Appellant

Shri Deepak Sharma, 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/87218-87219/2023

Date of Hearing: 11.12.2023

Date of Decision: 11.12.2023

PER : S.K. MOHANTY

These appeals are directed against the Order-in-Appeal Nos. 372 & 373 (Gr.V) /2022(JNCH)/Appeals dated 04.05.2022 (for short, referred to as 'the impugned order'), passed by the learned Commissioner of Customs (Appeals), Mumbai-II.

2. The brief facts of the case are that the appellants herein M/s Delhi Metro Rail Corporation Limited (DMRC) had filed the Bills of Entry (B/E) before the customs authorities for clearance of 'escalators with accessories'. The said goods were classified under CTI 8428 4000. The Central Government vide Notification No.84/97-Customs dated 11.11.1997 has exempted from payment of whole of the duty of the customs on all goods imported into India, for execution of projects financed by the United Nations or an International Organization and approved by the Government of India. Availment of exemption provided in the said notification is subject to the condition that the importer produces prescribed 'Essentiality Certificate' before the Assistant/Deputy Commissioner of Customs, at the time of clearance of the goods. The appellants had self-assessed the goods at the merit rate of 7.5% BCD 'plus' 10% SWS 'plus' 18% IGST. The appellants had paid the assessed duty on merit rates, owing to the reason that the imported goods were urgently required by them for executing the assigned work in the project and that issuance of the Essentiality Certificate was taking time at the appropriate government level. The Essentiality Certificate with regard to the goods imported by the appellants was issued on 08.05.2020 and thereafter, the appellants had filed the appeal before the learned Commissioner (Appeals), with the prayer for setting aside the assessed B/Es and for remanding the matter to the lower authority for examination of the duty exemption provided under the notification dated 11.11.1987, and for consideration of

the re-assessment of the B/Es. The appeals filed by the appellants were rejected by the learned Commissioner (Appeals) in the impugned order dated 04.05.2022, holding that the prayer for amendment of the B/Es cannot be considered inasmuch as the Essentiality Certificate was not in existence at the time of clearance of the goods.

3. Learned Advocate appearing for the appellants submitted that the application was made before the competent authorities for issue of the Duty Exemption Certificate (DEC) on 10.10.2019, which is prior to the date of filing of the Bills of Entry (filed in the month of January, 2020). Thus, he submitted that the appellant should not be penalized for non-consideration of the application by the one wing of the Government belatedly. He further submitted that since the goods imported by the appellants were intended for the specific use, as per the terms provided under the Notification dated 11.11.1997, the benefit of duty exemption should not be denied for no fault of the appellants. To support such stand, the learned Advocate has relied upon the judgements of the Hon'ble Supreme Court in the case of *Commissioner of Customs (Imports) Mumbai Vs. Tullow India Operations Ltd.*, reported in 2005 (10) TMI 502 – Supreme Court and *ONGC Ltd. Vs. Commissioner of Customs, Mumbai* reported in 2006 (8) TMI 181 – Supreme Court. On the basis of the submissions made, learned Advocate prayed for remanding the matter to the original authority for verification of the DEC and for grant of the duty exemption provided under the notification dated 11.11.1997.

4. On the other hand, learned Authorised Representative (AR) appearing for Revenue submitted that the self-assessment in both the cases was final and since, the appellants had not opted for the provisional assessments at the time of clearance of goods, the prayer made for consideration of the duty exemption cannot be allowed. He further submitted that the appellants did not submit any letter or undertaking during the course of assessment/clearance of goods, informing the department that the goods in question are eligible for duty exemption and that the certificate to such extent shall be furnished by them afterwards. Thus, he

submitted that there is no infirmity in the impugned order passed by the learned Commissioner (Appeals).

5. Heard both sides and examined the case records.

6. We find that the learned Commissioner (Appeals) in this case, has mainly relied upon the provisions of Section 149 of the Customs Act, 1962, to deny the benefit of duty exemption provided under notification No.84/1997-Customs dated 11.11.1997. The said statutory provision is extracted herein below for ease of reference:

"Section 149. Amendment of documents. -

Save as otherwise provided in [sections 30](#) and [41](#), the proper officer may, in his discretion, authorise any document, after it has been presented in the custom house to be amended in such form and manner, within such time, subject to such restrictions and conditions, as may be prescribed:

Provided that no amendment of a bill of entry or a shipping bill or bill of export shall be so authorised to be amended after the imported goods have been cleared for home consumption or deposited in a warehouse, or the export goods have been exported, except on the basis of documentary evidence which was in existence at the time the goods were cleared, deposited or exported, as the case may be."

7. On reading of the above provisions, it transpires that amendment of the documents filed for the import or export goods is permissible under the statute. The proviso clause appended to section 149 (supra) provides that amendment of the documents are permissible on the basis of evidence in existence at the time of clearance of the goods from the customs station. In this case, it is not the case of Revenue that the impugned capital goods were not imported by the appellants for accomplishing the purpose mentioned in the notification dated 11.11.1997. This fact is evident from the application dated 10.10.2019 filed by the appellants before the competent authorities for issuance of the DEC. Since, the B/Es in question were filed much after the date of such application, seeking for availment of duty exemption, it cannot be said that the department was ignorant about the entitlement of the appellants for such benefit provided in the notification. Further, on reading of the orders passed by the lower authority, we find that the department

was aware about the entitlement of the duty exemption provided under notification dated 11.11.1997 and that the Essentiality Certificate was issued subsequently, covering the imported goods. It is also an admitted fact on record that the application dated 10.10.2019 filed by the appellants were favorably considered by the competent authority for the duty exemption entitlement viz. Essentiality Certificate. Since, such certificate was issued upon subjective analysis that the goods are meant for use in the designated project(s), spelt out in the notification, denial of such benefit by the department is contrary to the legislative intent behind issuance of such notification, which was specifically designed in the public interest to grant the benefit provided thereunder. Identical issue involved in these appeals have been dealt with by the Hon'ble Supreme Court in the case of *Tulow India Operations Ltd.* (supra). The relevant paragraphs in the said judgement are extracted here under:

"35. *The essentiality certificate, thus, must be treated to be a proof of the fact that the importers have fulfilled the conditions enabling them to obtain the benefit under the exemption notification.*

36. *The principles as regard construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning.*

37. *The decision of this Court in Jindal Drilling and Indus Ltd. (supra), relied upon by Mr. Ganguly has no application to the facts and circumstances of the instant case.*

38. *It is true that ordinarily, the golden rule of literal interpretation must be given effect to. But it is also well-settled that where literal interpretation gives rise to an anomaly of absurdity; the same should be avoided. [See Ashok Lanka and Another v. Rishi Dixit and Others - (2005) 5 SCC 598]; Colgate Palmolive (India) Ltd. v. MRTP Commission and Others - (2003) 1 SCC 129].*

39. *Furthermore, it is also well-settled that the Legislature always intends to avoid hardship. In a situation of this nature, the exemption notification cannot be construed in a way which would prove to be oppressive in nature. However, we do not intend to lay down a law that delay on the part of the authorities in granting such certificates would automatically enable an assessee to*

obtain refund. Each case has to be judged on its own facts.

40. *We, however, do not agree with the contention of Mr. Lakshmikumaran that by reason of a public notice issued by a Custom House situated in a State, the effect and purport of statutory notification can be taken away. In terms of Section 151A of the Customs Act, it is only the Board which may issue instructions. Even under the aforementioned provision, the Board exercises a limited power. [See Pahwa Chemicals (P) Ltd. v. Commissioner of Central Excise, New Delhi -(2005) 2 SCC 720].*

41. *Having regard to the facts and circumstances of this case, we are of the opinion that the Tribunal has committed no illegality in remitting the matter back to the Commissioner. Civil Appeal No. 5900 of 2004 is, therefore, dismissed.*

42. *We for the reasons aforementioned remit the matter to the Commissioner for similar purpose in the matter of ONGC for consideration of the matter afresh. The Commissioner is directed to send a copy of its order to this Court. Other contentions raised by the parties herein shall remain open. It is made clear that in the event the order of the Commissioner goes against the contentions of the assessee Tullow, it will be open to it to question the correctness thereof before an appropriate forum."*

8. The judgement of Hon'ble Supreme Court in the case of *State of Jharkhand and Others Vs. Ambay Cements and another* – 2004(11) TMI 319, relied upon by the learned Commissioner in the impugned order, is entirely on different set of facts inasmuch the ratio as per the said judgement is that the conditions of exemption notification have to be strictly construed and not otherwise. In the case in hand, the appellants were within the scope and ambit of the notification dated 11.11.1997 inasmuch as the goods imported were entirely dedicated for the projects provided thereunder; and that they had also taken steps for compliance with the notification much before the date of importation of the subject goods, by way of filing the application as envisaged in the said notification. Since, the Essentiality Certificate was belatedly issued by the Government department, the appellants, in our considered view, cannot be denied with the benefit provided by the Government of India in the public interest.

9. In view of the foregoing discussions, the impugned orders are set aside and the appeals are allowed by way of remand to the

original authority for the limited purpose of verification of the 'Essentiality Certificate' dated 08.05.2020 and thereafter, for grant of the benefit of duty exemption provided under the notification No. 84/1997-Customs dated 11.11.1997. Needless to say, that opportunity of personal hearing should be granted to the appellants before deciding the issue afresh.

10. In the result, the appeals are allowed by way of remand.

(Operative part of the order pronounced in the open court)

(S.K. Mohanty)
Member(Judicial)

(M.M. Parthiban)
Member (Technical)

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