CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>MUMBAI</u>

REGIONAL BENCH - COURT NO. 01

Customs Appeal No. 85811 of 2023

(Arising out of Order-in-Appeal No. MUM-CUS-MA-IMP-212/2022-23 NCH dated 06.01.2023 passed by Commissioner of Customs (Appeals), Mumbai Zone-I)

Om Metals Infraprojects Ltd. **.....Appellant**
JSC JV NBCC Plaza, Tower-III, 4th Floor,
Sector-5, Pushp Vihar Saket,
New Delhi -110 017.

VERSUS

Commissioner of Customs (Import), Mumbai-II .... Respondent
New Custom House, Ballard Estate,
Mumbai – 400 001.

<u>Appearance:</u>

Shri Sushant Murthy, Advocate for the Appellant

Shri Ranjan Kumar, 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/85862/2024

Date of Hearing : 20.08.2024
Date of Decision : 20.08.2024

PER : S. K. MOHANTY

Briefly stated, the facts of the case are that the appellants herein are engaged, *inter alia*, in the business of fabrication and erection of hydro mechanical equipment for power and irrigation project. During the disputed period, the appellant had entered into the contract dated 22.12.2004 with North Eastern Electric Power Corporation Ltd. (NEEPCO) for execution of the work of Hydro Mechanical Equipment of the Kameng Hydro Electric Power Project, a 600 MW Mega Power Project to be set up in the State of Arunachal Pradesh. For installation of the power project for M/s NEEPCO, the appellants had imported various capital goods. The appellants had claimed the classification of the products under CTH 72254013 and the benefit under exemption Notification No. 12/2012-Customs dated

17.03.2012. The Bill of Entry was self-assessed in terms of sub-section (1) of Section 17 of the Customs Act, 1962. The Notification No. 12/2012-Customs dated 17.03.2012 was amended vide Notification No. 53/2013-Customs dated 26.12.2013. The effect of amendment in the Notification dated 26.12.2013 was that the phrase "113 Kameng Hydro Electrical Power Project, Arunachal Pradesh- 600 MW (North Eastern Electric Power Corporation Ltd.) (NEEPCO)" was inserted. Since, the appellant had paid 5% Custom Duty in terms of the Notification dated 17.03.2012 supra, thus had claimed re-assessment of the B/E by referring to the Notification No. 53/2013-Custom dated 26.12.2013. The application filed by the appellants was not favourably considered by the department on the ground that the Notification dated 26.12.2013 issued subsequent to the date of import of the goods will not have any retrospective effect. The said stand taken by the Original Authority was also endorsed by the learned Commissioner (Appeals) in the impugned order dated 06.01.2023. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. We find that the department has appreciated the fact that the appellant's power project was duly approved by the Joint Secretary in the Ministry of Power, Government of India and the benefit of duty exemption provided under the Notification dated 17.03.2012 is available. Since, the Notification dated 17.03.2012 was amended vide Notification dated 26.12.2013, the same should be considered as curative in nature inasmuch as the specific power project in the North East belonging to NEEPCO was inserted for providing the duty exemption contained therein. Since, the date of effect of the notification dated 26.12.2013 was not specifically provided, it has to be construed that to cure the defect of non-incorporation of the particular power project, which was subsequently done vide notification dated 26.12.2013 should be considered as retrospective in operation and the goods imported by the appellants for installation in the approved power project should be available for the benefit of exemption provided therein. We find that the issue with regard to retrospective applicability of the Notification is no more *res integra* in

view of various authoritative judgments delivered by the judicial forum. The Hon'ble Supreme Court in the case of W.P.I.L. Ltd. Vs. Commissioner of Central Excise, Meerut, U.P. reported in 2005 (181) E.L.T. 359 (S.C.) has clarified that clarificatory notification merely clarifies the position and makes explicit what was implicit and in such case, the notification should be considered as retrospective in operation. The relevant paragraphs in the said judgment are extracted herein below:

> ***"15.*** *The learned Counsel for the appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd., [(1995) 3 SCC 454]. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.*
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> ***16.*** *In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory promises, it could not be said that while issuing Notification No. 46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory Notification No. 95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit."*

4. Further, in the case of Ralson (India) Ltd. Vs. Commissioner of C. Ex., Chandigarh-I, 2015 319 E.L.T. 234 (S.C.), the Hon'ble Supreme Court have held that when the Government rectifies an inadvertent error by way of issuance of the notification, then the same should be treated as corrective/clarificatory and will have retrospective effect. The relevant paragraphs are quoted herein below:

> ***"9.*** *The assessee in the aforesaid case took the same plea by arguing that since the decision of the exemption vide Notification dated 1-3-94 was an inadvertent error and the Government realizing this mistake had reintroduced the exemption it will be treated as only corrective and clarificatory in nature. This contention was accepted by this Court in the aforesaid judgment holding that even during the period from 1-3-94 to 24-4-94, the manufacturers of part of power driven pumps shall continue to get the exemption. The relevant part of the said*

judgment which squarely applies to the present case as well is reproduced below in Paras 16-17 :

> *"16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing Notification No. 46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory Notification No. 95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.*
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> *17. For the foregoing reasons, in our opinion, the appeals deserve to be allowed and are allowed accordingly. Deposit, if any, made by the appellant in pursuance of the order passed by the authorities below will be refunded to it. In the facts and circumstances of the case, however, there shall be no order as to costs."*

10. *As we find that the compounded rubber was also rescinded by the same Notification dated 1-3-94 and reintroduced in the same manner vide another Notification issued on 28-3-1994, ratio of W.P. I.L. Ltd. case shall squarely apply to the present case as well. As a result, only on this ground, these appeals are allowed and the demand raised against the appellants is quashed."*

5. In view of the foregoing discussions, we are in agreement with the contention of the appellants that the benefit provided under Notification dated 26.12.2013 should be available to them and accordingly, the application filed by the appellants for re-assessment of B/E should be considered by the department by extending the benefit provided under Notification dated 26.12.2013. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

(M. M. Parthiban)
Member (Technical)

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