CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. III

Customs Appeal No. 85904 of 2016

[Arising out of Order-in-Original No. 144-2009-CAC-CCI-SHH-GR dated 29.09.2009 passed by the Commissioner of Customs (Import-I), Group-IV, Mumbai]

Dolphin Drilling Ltd. **.... Appellant**
C/o. Mulla & Mulla & Craigie
Blunt & Caroe,
Mulla House, 51, M.G. Road,
Mumbai 400 001.

Versus

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

APPEARANCE:

Shri Yogesh Patki with Shri Simon Mascarenhas, Advocates for the Appellant
Shri Deepak Sharma, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85559/2026

Date of Hearing: 15.04.2026
Date of Decision: 15.04.2026

PER: JUSTICE DILIP GUPTA

The order dated 29.09.2009 passed by the Commissioner of Customs (Import) confirming the demand of duty with applicable interest and penalty has been assailed in this appeal that has been filed by Dolphin Drilling Ltd.

2. The reason for confirming the demand that was proposed in the show cause notice dated 18.06.2009 is that the appellant had violated the conditions contained in Notification No. 21/2002 dated March 1, 2002[1], inasmuch as the appellant had violated the condition contained in the Certificate issued by the Director General of Hydro Carbons[2] to the effect that the goods have to be re-exported within the time stipulated in the Certificate. The contention of the appellant that the aforesaid Exemption

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[1] **the Exemption Notification**
[2] **DGH**

Notification did not require the importer to export the goods was not accepted for the reason that such a condition was contained in the certificates issued by the DGH. The further contention of the appellant that in any view of the matter, the condition stipulated in the Certificate was also satisfied because the goods had been cleared to SEZ unit was also not accepted for the reason that this would not amount to export.

3. Shri Yogesh Patki, learned counsel appearing for the appellant submitted that the order impugned deserves to be set aside for the reason that the Commissioner failed to appreciate that the Exemption Notification did not contain any condition for export of the goods and in any view of the matter, the appellant had cleared the goods to SEZ unit. In support of the contention, learned counsel placed his reliance upon the decisions of this Tribunal in the following decisions:-

(i) **B.J. Services Company Middle East Ltd. vs. C.C. (Import), Mumbai**[3]

(ii) **Transocean Offshore International Ventures vs. Commissioner of Customs (Import), Mumbai**[4].

4. Shri Deepak Sharma, learned authorised representative appearing for the department, however, supported the impugned order and submitted that it does not call for any interference in this appeal.

5. The submissions advanced by the learned counsel for the appellant and the learned authorised representative appearing for the department have been considered.

6. The appellant is engaged in the business of drilling oil as a contractor of Oil & Natural Gas Corporation Ltd.[5]. It imported goods for use in the contracts and claimed the benefit of Exemption Notification. The said Notification exempts goods of the description specified in Column (3) from so much of the duty of customs as is in excess of the amount calculated at the rate specified in the corresponding entry in Column (5). It is not in dispute that the goods imported by the appellant are mentioned at Serial No. 214 of the said Notification. The condition attached to Serial No.214 is

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[3] **[2015 (327) ELT 268 (Tri.-Mumbai)]**

[4] **[Customs Appeal No. 178 of 2009 decided on 23.05.2018]**

[5] **ONGC**

that condition No.29 should be satisfied. Condition No.29 provides that where the importer is a sub-contractor, he should produce at the time of importation the following documents, namely:-

> "(i) a certificate from a duly authorized officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the licenses or mining leases, as the case may be, referred to in that clause and containing the name of such sub-contractor,
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> (ii) an affidavit to the effect that such sub-contractor is a bona fide sub-contractor of the licensee or lessee, as the case may be,
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> (iii) an undertaking from such licensee or lessee, as the case may be, binding him to pay any duty, fine or penalty that may become payable, if not of the conditions of this notification are not complied with by such sub-contractor or licensee or lessee, as the case may be, and
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> (iv) a certificate, in the case of a petroleum exploration license or mining lease, as the case may be, issued or renewed after the 1st of April, 1999, by the Government of India or any State Government on nomination basis, that no foreign exchange remittance is made for the import of such goods undertaken by the sub-contractor on behalf of the licensee or lessee, as the case may be :
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> Provided that nothing contained in this sub-clause shall apply if such sub-contractor is an Indian Company or Companies."

7. A bare perusal of Condition No.29 attached to Serial No.214 shows that the sub-contractor should produce a certificate duly authorized by an officer of the DGH to the effect that the goods are required for petroleum operations and have been imported under licence or mining lease, as the case may be, referred to in the clause containing the name of such contractor. Condition No.29 does not stipulate that the sub-contractor has to export the goods within a stipulated time. It is, however, seen that the certificate that was issued by the DGH mentions that the appellant has to re-export the goods by 30th of April 2007, which date was subsequently extended to 30th of June 2007.

8. The core issue that arises for consideration, therefore, is whether such a condition could have been imposed by the DGH.

9. The DGH was required to certify that the imported goods were required for petroleum operations and had been imported under a licence or mining lease and contains the name of the sub-contractor. It is not in dispute that the certificate issued by the DGH contains this relevant information. It transpires that it is because of paragraph 2.17 of the Foreign Trade Policy 2004-2009 that this condition was imposed.

10. This issue was examined by a Division Bench of this Tribunal in the case of **B.J. Services Company Middle East Ltd. vs. C.C. (Imports), Mumbai**[6]. The Bench noticed that no time period has been stipulated in the Exemption Notification. The Bench also noticed that the appellant had used the capital goods during the period permitted in the certificate and after completing the use, cleared these goods to SEZ unit. The Bench then observed that clearing these goods to a SEZ unit would amount to "export" under section 2(m) of the SEZ Act, 2005 and, therefore, there is no failure on the part of the appellant in fulfilling the terms and conditions of the Exemption Notification. Regarding re-export, the Bench noticed that paragraph 2.21 of the Foreign Trade Policy 2004-2009 provided for importation without a licence of second-hand capital goods on re-export basis on executing a legal undertaking with the Customs authorities. However, paragraph 2.17 of the said Policy provides that the import of second-hand capital goods shall be allowed freely without any condition of re-export.

11. The Bench, therefore, held that merely because the appellant had claimed the benefit of paragraph 2.21 at the time of importation would not mean that it can be denied the benefit of paragraph 2.17 of the said Policy. The relevant paragraph is reproduced below:-

> "5.1 The goods were imported by the appellant claiming the benefit of Notification 21/2002. As per the said Notification, for availment of exemption, the importer has to produce a certificate from the DGH certifying that the imported goods are required for petroleum operations in terms of a contract under the new exploration licensing policy. In the present case, the appellant has produced such a certificate from the DGH at the time of importation of the goods and, therefore, they have fulfilled the terms and conditions of the Notification. There is also no time period stipulated regarding the period of use in the Notification. Further, the appellants have

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[6] **[2015 (327) ELT 268 (Tri.-Mumbai)]**

used the capital goods during the period permitted in the certificate issued by DGH. After completing their use, they have sent these goods to the Visakhapatnam SEZ which activity is deemed as "export" under Section 2(m) of the SEZ Act, 2005. Thus there is no failure on the part of the appellants in fulfilling the terms and conditions of exemption. As regards the requirement of re-export, para 2.21 of the Foreign Trade Policy 2004-2009 provided for importation without a licence of second-hand capital goods on re-export basis by executing a legal undertaking with the Customs authorities. However, para 2.17 of the said Policy provides that the import of second-hand capital goods shall be allowed freely without any condition of re-export. If that be so, merely because they have claimed benefit under para 2.21 at the time of importation, even though they were eligible for the benefit under para 2.17 of the EXIM Policy, the benefit of para 2.17 of the Foreign Trade Policy cannot be denied to the appellant. In any case, the appellant has supplied the material to the Visakhapatnam SEZ which is a deemed export as per the provisions of the SEZ Act."

12. In the present case the appellant had referred to paragraph 2.21 of the Foreign Trade Policy 2004-09.

13. The aforesaid decision of the Tribunal would, therefore, apply to the facts of the present case.

14. Such being the position, reliance placed on the decision of the Bombay High Court in the case of **Shri Shakti LPG Ltd. vs. Union of India**[7] is misplaced. In this decision, Section 69(1) of the Customs Act, 1962 came up for interpretation. This section deals with warehoused goods for export. This section, therefore, would have no application to the present case.

15. Thus, in view of the above, the impugned order dated 29.09.2009 passed by the Commissioner of Customs deserves to be set aside and is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

(JUSTICE DILIP GUPTA)
PRESIDENT)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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[7] [2007 (214) ELT 174 (Bom.)]