IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH, MUMBAI

Appeal No. C/178/2009

Arising out of Order-in-Appeal No. 318/2008/MCH/A.C./IV/07-08, Dated: 19.12.2008
Passed by the Commissioner of Customs and Central Excise

Date of Hearing: 03.01.2018
Date of Decision: 23.05.2018

TRANSOCEAN OFFSHORE INTERNATIONAL VENTURES LTD

Vs

COMMISSIONER OF CUSTOMS (IMPORT)
MUMBAI

Appellant Rep by: Shri J C Patel, Adv.
Respondent Rep by: Shri Trupti Chavan, Asstt.Commr. AR

CORAM: Ramesh Nair, Member (J)
Raju, Member (T)

Cus - Exemption - Notification 21/2002-Cus, Sr. no. 217, List no. 12 - Insofar as exemption notification is concerned, there is no condition of re-export under the same - the only condition stipulated is that the imported goods should be certified by the Director General of Hydrocarbons as being required for Petroleum operations under the New Exploration Policy - as the said condition has been met, the reason for the demand that the goods were not re-exported within the stipulated time is extraneous to the notification - impugned order set aside and appeal allowed with consequential relief: CESTAT [para 4]

Appeal allowed

Case laws cited:

Kantilal Manilal & Co. Vs. CC 2004 (173) ELT 35...Para 2

Haffkine Bio Pharmaceutical Corporation Ltd. vs. CC 1999 (109) ELT 393...Para 2

Indoswe Engineers P. Ltd. Vs. UOI 1989 (41) ELT 217...Para 2

Mangalore Chemicals & Fertilizers Ltd. - 2002-TIOL-234-SC-CX...Para 4

Alcatel India Ltd. 1995 (79) ELT 271 (TRI) and Frontier Aban Drilling (India) Ltd. 2010 (254) ELT 63 (Mad)...Para 4

FINAL ORDER NO. A/86496/2018

Per: Ramesh Nair:

The issue involved in present appeal is that the Appellant had imported goods vide Bill of Entry No. 520397 dt. 09.12.2004 as sub contractor of Reliance Industries required in connection with the Petroleum Operations to be undertaken. The benefit of exemption Notification No. 21/2002 - Cus dt. 01.03.2002 under serial no. 217 which covered goods under list no. 12 of said notification was also claimed. The notification provided condition of certificate from the Director General of Hydrocarbons to the effect that the imported goods are required for petroleum operations under contract signed under the New Exploration licensing policy. The Appellant submitted the said certificate on 02.11.2004 which also carried endorsement that the same is subjected to Re-export by 31.12.2005. The goods were allowed clearance by the customs with the benefit of said exemption and the goods were used for intended purpose. The time limit for re-export of goods was extended by the Director General of Hydrocarbons to 31.12.2006. The Appellant could not re-export the goods within said time and the goods were exported in March' 2007 vie shipping Bill No. 5096013 dt. 20.03.2007. The Appellant was issued less charge notice dt. 03.03.2007 under Section 28 of the Customs act demanding duty of Rs. 2,57,341/- on the ground that the Appellant had not submitted the documents evidencing proof of re-export of imported goods. The Appellant filed reply narrating the facts and also that the date of reexport given on the certificate by the Director General of Hydrocarbons was superfluous. That the Director General of Hydrocarbons by letter dt. 23.02.2006 acceded to request of industry for waiver and discontinuance of the stipulation of re-export of goods. That eventually the goods were re-exported. The adjudicating authority confirmed the demand as proposed in less charge notice with interest. The Appellant approached the Commissioner (Appeals) who upheld the adjudication order. Hence the present appeal.

2. Shri J.C. Patel, ld. Counsel for the Appellant submits that the impugned order has been wrongly passed as there was no condition of re-export under the exemption notification. There is no dispute that the imported goods were used for the intended purpose and were alsore-exported. The certificate from the Director General of Hydrocarbons in terms of the notification was only to the extent that the goods were required for petroleum operations under contract signed under the New Exploration Licensing Policy. There is no condition that the certificate must stipulate the time limit for re-export of goods. He relies upon the judgments in case of *Kantilal Manilal & Co. Vs. CC 2004 (173) ELT 35*, *Haffkine Bio Pharmaceutical Corporation Ltd. vs. CC 1999 (109) ELT 393* and *Indoswe Engineers P. Ltd. Vs. UOI 1989 (41) ELT 217*. He also submits that the Director General of Hydrocarbons has waived the and discontinued the stipulation of condition of re-export vide letter dt. 23.02.2006.

3. Ms Trupti Chavan, ld. AC, AR appearing for the revenue reiterates the findings of the impugned order. It is contended by her that the Appellant had executed Bond towards re-export of goods and the endorsement on the certificate was required to be complied with. Since the goods were not re-

exported within the time stipulated by the Director General of Hydrocarbons, the Appellant is liable for duty.

4. We have heard both the sides and perused the records. We find that as far as exemption notification is concerned, there is no condition of re-export of goods under the said notification. The only condition stipulated under the said notification is that the imported goods should be certified by the Director General of Hydrocarbons to be required for Petroleum Operations under the New Exploration Policy. We find that as far as said condition is concerned the Appellant had submitted the certificate issued by the Director General of Hydrocarbons. The only reason for the demand canvassed by the revenue is that the goods were not re-exported within the stipulated time. In this context we are of the view that when the exemption notification does not prescribe any such condition of re-export of goods, in that case the delay in re-export of goods by the stipulated date endorsed by the Director General of Hydrocarbons would not result into denial of benefit of exemption Notification. It is coupled with the fact that the Director General of Hydrocarbons has waived and discontinued the stipulation of re-export vide letter dt. 23.02.2006. The ld. Counsel for the Appellant has also produced before us the copy of Order-in-*appeal No. 34/MCH/DC/Gr.VB/2013 dt. 13.12.2011 in case of M/s Sedco Forex International Drilling* wherein in similar set of facts the benefit of exemption notification was allowed to the party. We are of the view that only for the reason that there has been delay in re-export of goods the benefit of exemption notification cannot be denied to the Appellant. Our views are based upon the judgments in case of *Mangalore Chemicals & Fertilizers Ltd. 1991 (55) ELT 437 (SC)* = *2002-TIOL-234-SC-CX* and *Alcatel India Ltd. 1995 (79) ELT 271 (TRI)*and *Frontier Aban Drilling (India) Ltd. 2010 (254) ELT 63 (Mad).* In view of our above observations and findings we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in court on 23.05.2018)