2013 (4) ECS (125) (Tri – Mum)

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

Bharat Bijlee Ltd.

Vs

Commissioner of Customs (Import) Mumbai

APPEAL NO: C/559/2006

[Arising out of Order-in-Original No.15-16/2006/CAC/CC(I) /AKP dated 31/01/2006 passed by the Commissioner of Customs (Import), Mumbai.]

Appearance:

Shri D.B. Shroff, Advocate for the appellant

Shri. P.N. Das, Commissioner (AR) for the respondent

CORAM:

Hon'ble Shri P.R. Chandrasekharan, Member (Technical)

Hon'ble Shri Anil Choudhary, Member (Judicial)

Date of hearing: 19/11/2012

Date of decision: 29.01.2013

ORDER NO: M/254/13/CSTB/C- I

"From the Tariff heading 98.01 it is clear that the benefit under the said entry would be available in respect of all items of machinery as well as components, raw materials for the manufacture of the aforesaid items, required for the initial setting up of a unit or for the substantial expansion of an existing unit of a specified project. The expression used is of a `specified project'. In other words, imported materials should be used either for the initial setting up of a unit or a substantial expansion of a unit of a `specified project…... After the project is completed the contracts have to be finalised under Regulation 7 so that the Revenue can be satisfy that the terms and conditions of the project imports have been complied with by the importer. If one-to-one co-relation is not maintained, fulfilling of the condition regarding usage of the imported product ill a particular project

cannot be established. That is the reason why the Project Import Regulations envisage registration of the contract for a specified project." [Para 5.3]

"The Tariff entry has to be read on the basis of language used therein as has been held in a number of judicial pronouncements. The judiciary cannot legislate and their only job is to interpret the law as it is worded. They cannot add or subtract any words into the legislation. It s a well settled position in law that in interpretation of fiscal statutes, the principles of strict interpretation should be followed." [Para 5.12]

Per: P.R. Chandrasekharan, Mr. :

1. The appeal is against the Order-in- Original No. 15-16/ 2006/CAC/CC(I)/ AKP dated 31/01/2006 passed the Commissioner of Customs (Import), New Custom House, Mumbai.

2. The appellant, M/s. Bharat Bijlee Ltd., are manufacturers of electric transformers. The appellant import CRGO electrical steel sheets and electrolytic copper rods for the manufacture of such transformers. They imported the said materials under Project Import Regulations, 1986 under heading No. 98.01 of the 1st Schedule to the Customs Tariff Act. The appellant also procured the same materials without payment of Customs duty under duty exemption entitlement scheme and also on payment of appropriate Customs duty. The appellant had undertaken 16 projects under which they imported the aforesaid raw materials on concessional rate of duty under heading 98.01of the Customs Tariff as per the Project Import Scheme during 1995-99. In respect of imports under 4 project, the assessment had been finalised. However, in respect of 12 projects, the assessments were provisional and were pending finalisation.

2.1. An investigation was undertaken into the project imports undertaken, which revealed that the appellant had imported raw materials in excess of the quantity required by them for manufacture of transformers for the specified project. In certain cases it was observed that the import under the Project Import Scheme had taken place after the transformers had been manufactured and dispatched to the project site by the importer. Statement of the Dy. General Manager (Materials) of the appellant-farm was recorded on 13/09/2000 wherein he was asked about the project undertaken in respect of M/s. Haldia Petro. In his statement the said official confirmed that in respect of the said project, transformer had been manufactured and dispatched from the factory even before the imported material had been cleared by the Customs and when he was questioned about what was done with the imported material, he evaded a direct answer and stated that the duty element saved on has been passed on to the

project authority. From the investigation conducted it came to light that the appellant imported CRGO steel and cooper in excess of the requirement of the specific project and the imported material had not been used for the project for which it was intended but was diverted. Thus, it appeared that the appellant had violated the provisions of Project Import Regulations, 1986 by misusing the benefit under the said scheme.

2.2. Accordingly, a show cause notice dated 30/07/2001 was issued proposing to finally assess the goods imported under 12 contracts with a total assessable value of Rs. 4,22,07,432/- under Project Import Regulations (assessed provisionally earlier) on merits without extending the concessional rate of duty applicable to project Imports under CTH 98.01 and demanding differential duty of Rs.98,57.918/- as per the terms of the bond/bank guarantee executed by them at the time of clearance of the goods under project imports. It was also proposed to confiscate the said goods under Section 111(o) .of the Customs Act, 1962 and to impose penalty under Section 1 12(a) of the Customs Act. In respect of four contracts, where the assessments had already been finalised, another show cause notice dated 23/01/2002 was issued proposing to re-determine the Customs duty on merits without extending the benefit of concessional rate of duty available to project imports and demanding differential duty of Rs.16,12,401/- under the provisions of Section 28(1) of the Customs Act along with interest thereon under Section 28AA. The notice also proposed to impose penalties on the appellant under Section 114A and also to impose fine on the goods already cleared. The case was adjudicated vide the impugned order and the learned Commissioner finalised he assessment in respect of 12 projects on merits rate without extending the benefit of project imports and confirmed the differential duty demand of Rs 98,57,918/-. In respect of four projects which had already been finalised, he confirmed the duty demand of Rs.16,12,401 /- under the provisions of Section 28 of the Customs Act and held that the appellants are liable to pay interest thereon under Section 28AA of the said Act. He also confiscated the goods imported under 16 contracts. As the goods were physically not available for confiscation, he imposed a fine in lieu of confiscation amounting to Rs.1.25 crore. He also imposed a penalty of Rs.50 lakhs on the appellant under Section 112(a) in respect of notice dated 30/07/2001 and a penalty of Rs.16,12,401/- under Section 114A of the Customs Act, in respect of show cause notice dated 23/01/2002. It is against these orders, the appellant is before us.

3. The learned counsel for the appellant made the following submissions.

3.1. The contracts for the projects which they entered into, provided for a strict delivery schedule and a penalty if the delivery was not made on time. The total

time required from the date of purchase order to actual import of raw materials under the Project Import Regulations is about 15 months and the time taken for manufacturing a transformer is at least three months. Therefore, if they had waited for 18 months to import the raw materials and manufactured the transformers for the specified project, they would not have been able to deliver the transformers on time and they would have been liable to pay, liquidated damages for the delay. Therefore, in order to meet the delivery schedule, they did not wait for the imports under Project Import Regulations but utilised similar raw materials lying in stock with them, which was either duty-paid imported raw materials or raw materials imported under DEEC scheme in respect of which they had discharged the export obligation. However, they had passed on the benefit of concessional rate of duty under the Project Import Regulations to the customers even though they had utilised duty-paid materials to manufacture the transformers.

3.2. During 1995-99 they had registered 16 contracts under Project Import Regulations. In respect of four contracts, the assessments were finalised between 10/06/1998 to 25/01/2000. In respect of balance contracts the same were provisionally assessed. In respect of the contracts which had already been finalised, a show cause notice dated 23/01/2002 has been issued demanding duty of Rs.16,12,401/- and in respect of 12 provisionally assessed contracts, a show cause notice dated 30/07/2001 has been issued demanding differential duty of Rs. 98,57,918/-. It is his submission that they have not contravened any law. They have not changed the location of the project and there is no allegation that any material imported under concessional rate of duty under Project Import Scheme had been diverted to the open market. The material they imported in respect of a particular project might have been used in the manufacture of transformers which were supplied for another project. Therefore, a purposeful interpretation must be given to the Project Import Regulations rather than a mechanical interpretation based on the one-to-one co-relation between the project and the goods imported under the Project Import. Once it is not disputed that the appellants were entitled to import under the Project Import Regulations and the project so registered were completed with similar materials, the benefit should be granted. He relied on the decision of the Hon'ble apex Court in the case of Commissioner of Customs vs. Tullow India Operations Ltd. 2005 (189) ELT 401 (SC) in support of the above contention and ONGC vs. Commissioner of Customs 2006 (201) 321 (SC). The learned counsel further argues that the appellant had acted bona fidely and in accordance with the substance and spirit of the Project Import Regulations. Chapter Note 2 to Chapter 98 requires the goods to have been imported in accordance with the Regulations and they have complied with this condition. All the units to whom the transformers have been supplied are units as defined under Regulations. Regulation 4 provides that the assessments under heading 98.01 is available

to these goods which are imported against one or more specified contracts which have been registered. The said Regulation does not speak of any end use or one-to-one correlation and therefore, there is no necessity for any one-to-one correlation between the raw materials imported and the goods manufactured and supplied to a specific project. Inasmuch as they have substantially complied with the provisions of these Regulations, the ratio of the decision of this Tribunal in the case of BSES Kerala Power Ltd. vs. Commissioner of Cu. : toms, Cochin 2006 (196) ELT 246 (T) would apply. They have not indulged in evasion of Customs duty whatsoever and the imported goods were used in the manufacture of transformers for other projects and all such contracts have been fulfilled and there is no allegation that they have diverted the imported materials in the open market. There is no bar or restriction in the use of imported inputs which have been assessed at concessional rate of duty under heading 98.01 to other projects. As regards the extended period of time invoked in respect of the notice dated 23/01/2002, it is their contention that they have not mis-declared or mis-stated any facts willfully and, therefore, the extended period of time should not have been invoked and they rely on the decision of the Hon'ble apex Court in the case of Cosmic Dye Chemical vs. Collector 1995 (75) ELT 721 (SC) and Pahwa Chemicals Pvt. Ltd. vs. Commissioner 2005 (189) ELT 257 (SC). In any event, the issue relates to interpretation of statute and i he appellant bonafidely believed that they were entitled to use as t1- ey had done and, therefore, interpretation of a statute cannot empower the Customs authorities to invoke larger period of time. It is also argued that the in respect of 12 projects which were finalised by .he impugned order; imposition of penalty under Section 112(a) of the Customs Act of Z 50 lakhs is illegal and unwarranted. Inasmuch as the goods are not available, the question of imposing any fine in lie of confiscation is also not warranted and they relied on the decision of the Tribunal in the case of Associate Marketing Services vs. Commissioner of Customs 2006 (195) ELT 287.

3.3. The learned counsel also relies on the decision of the apex Court in the case of Zuari Industries Ltd. vs. Commissioner of Central Excise & Customs 2007 (210) ELT 648 (SC) wherein it has been held that heading No. 98.01 needs to be liberally interpreted as it deals with industrialisation.

1.4. Accordingly, he prays for setting aside the impugned order.

4. The learned Commissioner (AR) appearing for the Revenue strongly refutes the arguments made by the learned advocate for the appellants. He submits that the goods imported for a particular project have been diverted and used in the manufacture of transformers which were supplied to some other projects. The Project Import Regulations envisages that the goods imported for a particular

project should be used only in that project and there is no provision under heading 98.01 or under the Project Import Regulations which permits the use of such goods intended for one project in another. He also relies on the decision of the Hon'ble apex Court in the case of Jacsons Thevara vs. Collector of Customs and Central Excise 1992 (61) ELT 343 (SC) and Commissioner of Customs, Mumbai vs. NRB Bearing Ltd. 2003 (159) ELT 755. He also relies on the decision of the Tribunal in the case of Photophone Ltd. vs. Collector of Customs, Bombay 1997 (92) ELT 596 in support of the above contentions. He submits that the procedural conditions stipulated in the Project Import Regulations have to be strictly followed and the procedures are not mere formalities and relies on the decisions of the Tribunal in the case of Eag!e Flask Industries Ltd. vs. Commissioner of Central Excise, Pune 2004 (171) ELT 296 (SC) and Collector of Central Excise, Meerut vs. Modi Rubber Ltd. 2001 (133) ELT 515 (SC). Accordingly, he prays for upholding the impugned order.

5. We have considered the rival submissions.

5.1. It will be relevant at this juncture to consider the wordings of Chapter 98 relating to Projects Imports so that the issue arising for consideration can be appreciated better. Note 2 to Chapter 98 and Tariff description of heading 98.01 are reproduced below:

> "2. Heading 9801 is to be taken to apply to all goods which are imported in accordance with the regulations made under section 157 of the Customs Act, 1962 (52 of 1962) and expressions used in this heading shall have the meaning assigned to them in the said regulations."
>
> Heading 98.01
>
> "9801 All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit of a specified:
>
> (1) Industrial plant,
>
> (2) Irrigation project,
>
> (3) Power project,

(4) Mining project,

(5) Project for the exploration for oil or other minerals, and

(6) Such other projects as the central government may, having regard to the economic development of the country, notify in the official gazette in this behalf."

5.2. The relevant extracts of Project Import Regulations 1986 are also reproduced below:

"4. Eligibility:-

The assessment under the said heading No. 98.01 shall be available only to those goods which are imported (whether in one or more than one consignment) against one or more specific contracts, which have been registered with the appropriate Custom House in the manner specified in regulation 5 and such contracts or contracts has or have been so registered,

(i) before any order is made by the proper officer of customs permitting the clearance of the goods for home consumption;

(ii) in the case of goods cleared for home consumption without payment of duty subject to re-export in respect of fairs, exhibitions, demonstrations, seminars, congresses and conferences, duly sponsored or approved by the Government of India or Trade Fair Authority of India, as the case may be, before the Customs payment of duty.

5. Registration of Contracts:-

(1) Every importer claiming assessment of the goods falling under the said heading No. 98.01, on or before their importation shall apply in writing to the proper officer at the port where the goods are to be imported or where the duty is to be paid for registration of the contract or contracts, as the case may be:

Provided that in the case of consignments sought to be cleared through a Custom House other than the Custom House at which the contract is registered, the importer shall produce from the Customs House of registration such information as the proper officer may require.

(2) The importer shall apply, as soon as may be, after he has obtained the Import trade control licence wherever required for the import of articles covered by the contract and in case of imports covered by the Open General Licence or imports made by Central Government, any State Government, statutory corporation, public body or Government undertaking run as a joint stock company (hereinafter referred to as "Government Agency") as soon as clearance from the concerned Administrative Ministry or Department, as the case may be, has been obtained.

(3) The application shall specify -

(a) the location of the plant or project;

(b) the description of the articles to be manufactured, produced, mined or explored;

(c) the installed or designed capacity of the plant or project and in the case of substantial expansion of an existing plant or project the installed capacity and the proposed addition thereto;

(d) such other particulars as may be considered necessary by the proper officer for purposes of assessment under the said heading.

(4) The application shall be accompanied by the original deed of contract together with a true copy thereof, the import trade control licence, wherever required, and an approved list of items from the Directorate General of Technical Development or the concerned sponsoring authority.

(5) The importer shall also furnish such other documents or other particulars as may be required by the proper officer in connection with the registration of contract.

(6) The proper officer shall, on being satisfied that the application in the order register the contract by entering the particulars thereof in a book kept for the purpose, assign a number in token of the registration and communicate that number of the importer and shall also return to the importer all the original documents which are no longer required by him."

1.3 From the Tariff heading 98.01 it is clear that the benefit under the said entry would be available in respect of all items of machinery as well as components, raw materials for the manufacture of the aforesaid items, required for the initial setting up of a unit or for the substantial expansion of an existing unit of a specified

project. The expression used is of a `specified project'. In other words, imported materials should be used either for the initial setting up of a unit or a substantial expansion of a unit of a `specified project'. This condition implies that materials imported for one unit of a specified project cannot be used elsewhere in any other unit or in any other project. Similarly, the application for the project imports should clearly specify the particulars mentioned under clauses (a) to (d) of sub - regulation (3) of the Regulation 5 and these particulars are required to be registered unitwise and projectwise. The purpose of requiring all these details in advance is to ensure that there is one-to-one co-relation between the goods imported and the projects where they would be used and, therefore, it cannot be said that there is no requirement of one-to-one co-relation between the materials imported and the units/projects where they are going to be used. Similarly, importation under contracts mentioned in Regulation 4 refers to contracts for a specific project. For a given project, there can be more than one contract under which the goods are required to be supplied after importation. After the project is completed the contracts have to be finalised under Regulation 7 so that the Revenue can be satisfy that the terms and conditions of the project imports have been complied with by the importer. If one-to-one co-relation is not maintained, fulfilling of the condition regarding usage of the imported product ill a particular project cannot be established. That is the reason why the Project Import Regulations envisage registration of the contract for a specified project. In the case before us it is an admitted position that the materials have been imported after the machinery have been already supplied to a project. If the machinery has already been supplied to a particular project, usage of the imported raw materials for the manufacture of machinery which is required to be supplied to a specific project cannot happen at all and, therefore, it is clear that the appellants have not complied with the terms and conditions of the Project Import Regulations.

5.4. The issue has been examined in detail by the adjudicating authority who in para 7 of the impugned order has recorded a categorical findings as follows:

> "30. From the chart of consumption of CRGO sheets and copper filed with their reply dt. 26/10/2004 it is evident that during the years 95-96 to 99-2000 (period covered by the two Show Cause Notices), imports under Project Import Scheme ranged from 2.7% to 28.9% of the total of the CRGO and copper sheets procured by them from all sources and used in the manufacture of transformers. Therefore, even the contention of the importer that imports under one protect import contract was utilized in the manufacture of transformers covered by another contract is factually not correct. Use of these two raw materials in the manufacture of transformer

which were not at all covered by the project import scheme, thus, ranged from about 97% to 70% cases."

5.5. Coming to the Tullow India case (cited supra), relied upon by the appellant, the said decision pertains to Notification 12/1/99 where the issue involved was delay in submission of essentiality certificate. The appellant was unable to produce the essentiality certificate from the Director General of Hydrocarbons at the time of importation of goods but was able to procure the same subsequently and submitted to the Customs authorities after the imports. In that context it was held that statute where there is a provision for provisional assessment and/or provisional clearance subject to compliance to certain conditions such conditions may be fulfilled at a later stage, namely, at the time of final clearance or final assessment. We do not understand how the ratio of the said judgment can be applied to the facts of the present case. The issue involved herein is diversion of materials imported for a particular project to some other project and this was not certainly the issue before the Hon'ble apex Court in the Tullow India case. Accordingly, we do not find any relevance of the case law to the facts at hand before us.

5.6. Similarly, in the case of ONGC, cited supra, the issue involved pertains to similar circumstances where the licence was not renewed at the time of importation but was renewed subsequently, retrospectively and, therefore, the benefit of exemption was denied. In that context it was held that since the licence was renewed retrospectively and the essentiality certificate was given by the competent authority, the conditions precedent for obtaining exempt on stood fully satisfied. It should be remembered that, in these cases, the goods were used for the purpose for which they were imported and on y the requisite permission from the appropriate authorities were obtained later. Hence the ratio of these judgments cannot apply to the present case.

5.7. Coming to the decision in the case of BSES Kerala Power Ltd., cited supra, the issue before the Tribunal was the applicability of the concessional project import rate for the replacement imports. The facts of the case were that the appellant therein, M/s. BSES Kerala Power Ltd., had an agreement with Kerala State Electricity Board for the initial setting up and generation of power plant at Udyogmandal and after completing the formalities they imported certain parts. During the execution of the project, it was noticed that three numbers of notable hot section assemblies which are very essential for power generation had to be replaced and the replacements were received and cleared at concessional rate of duty applicable to project imports. The Revenue contended that the replaced items did not from part of the original contract but was part of an independent contract. The Tribunal held that once the contract is registered, items imported under the contract are entitled to project import benefit. Inasmuch as the contract was registered, the Tribunal extended the benefit to replacement parts also as

they were for the same specified project. In other words, in that case also there was no usage of the imported goods for project other than the specified one. Similarly the reliance placed on Zuari Industries Ltd. case (cited supra) does not help as the facts are distinguishable. There was no diversion of material involved in that case. In the case before, us that is not the issue. In the case before us, it is an admitted position that there is a clear diversion of the goods imported under a specific contract for a specific project to another contract for another project. In other words, the condition of using the imported goods for a specified project stands completely violated and, therefore, the appellant is not eligible for the benefit of the Project Import Regulations.

5.8. It is in this context, the decision of the Tribunal in the case of NRB Bearing Ltd., cited supra, becomes relevant. In the said decision this Tribunal held that the benefit under the Project Import Regulations is specific to a unit and location as per the Project Import Regulations and in case the imported goods are utilised in some other units, the goods are liable to confiscation under Section 111(o) of the Customs Act. The said decision of the Tribunal was affirmed by the Hon'ble apex Court reported in [2006 (197) ELT Al 57 (SC)]. A similar issue came up before the Hon'ble apex Court in the case of Jackson Thevara (cited supra). In that case the imported goods cleared at concessional rate of duty by declaring them as project imports meant for substantial expansion of an existing unit was actually transferred to another company for setting up of new unit. It was held by the Hon'ble Court that since the appellant did not install the said machinery for the expansion of an existing unit but transferred to the company for setting up of a new unit, they are not eligible for the benefit of concessional rate of duty under heading 84.66 of the Customs Tariff Act (predecessor to 98.01) and the appellant is liable to pay duty at the normal rates prescribed in the Tariff. It was further held that the goods are liable to confiscation under Section 111(o) of the Customs Act and penalties are imposable under Section 112.

5.9. Therefore, we do not find any merit in the argument of the appellant that so long as the goods have been used in some projects which are also registered and not in the specified project, in respect of which the goods were imported, the benefit under 98.01 would be available and accordingly we reject this contention.

5.10. The appellant has also raised a point that in view of the huge time lag involved in obtaining permission under the Project Imports, they were forced to utilise the materials imported earlier in lieu of the materials to be imported under the Project Imports Regulations. In other words, they are pleading hardship or inconvenience in following the terms and conditions of the Project Import Regulations. This argument of the appellant has no merits. The Hon'ble apex Court in Shankar Raju vs. Union of India 2011 (271) ELT 492 (SC) observed as follows:

"where the Legislature clearly declares the intent in the scheme of a language of a statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the legislature, is such meaning is clear on the face of the statute. If the statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court."

Therefore, the argument of hardship or inconvenience in following the terms and conditions of the Project Import Regulations has no merit, at all and accordingly the same is rejected. A similar view was taken by the Hon'ble apex Court in the case of Mihir Textiles Ltd. [1997 (92) ELT 9 (SC)] relating to project imports wherein the appellant had attributed the delay in registration of project import contract to bureaucratic delays.

5.11. The appellant submits that there is no requirement of one-to- one correlation between the imports made and the projects in which they are used and so long as the goods have been used in some approved projects, then the requirement would be satisfied. We do not agree with this proposition. Heading 98.01 clearly states that only materials required for the initial setting up of a unit or the substantial expansion of an existing unit of a specified project which has been registered with the department is eligible for the project import concession. In the tariff entry, the expression used is "required, for the initial setting up of a unit, or the substantial expansion of an existing unit of a specified project." If goods imported in respect of a particular unit of a specified project are used in another unit of another project, the expression used in the tariff entry becomes redundant.

5.12. The Tariff entry has to be read on the basis of language used therein as has been held in a number of judicial pronouncements. The judiciary cannot legislate and their only job is to interpret the law as it is worded. They cannot add or subtract any words into the legislation. It is a well settled position in law that in interpretation of fiscal statutes, the principles of strict interpretation should be followed. The same has been enunciated by Rowlatt J in his Classic Statement:

"In a taxing statute, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

Therefore, we do not agree with the contention raised by the appellant in this regard.

5.13. This argument is also not acceptable for another reason. There are various schemes under the Customs law wherein one-to-one co-relation is not required between the imported materials and their usage in a particular project. For e.g. under the DEEC scheme, the export obligation can be fulfilled in advance and raw materials required for the manufacture of the export products can be imported subsequently by availing the benefit of exemption. Similarly, in the case of duty-free replenishment scheme, imports can be made duty-free for replenishing the materials already used in the manufacture of the exported products and in those cases also one-to-one co-relation is not required. In other words, wherever the legislature wanted flexibility with regard to use of materials without any nexus between the imported materials and the exported product, :the legislature devised a scheme to that effect. If the intention of the legislature was to provide such flexibility in the project import scheme, they would hive specifically provided for the same either in the Tariff entry itself or in the Project Import Regulations. In the absence of such a provision, it cannot be presumed that the legislature did not envisage one-to-one co-relation between the imported goods and the projects in which they would be used.

5.14. Coming to the issue of confiscation in the case of goods already cleared and where the assessments had already been finalised, the question of confiscation would not arise as the bonds had already been discharged in those cases. Therefore, the imposition of fine of Rs 25 lakhs on the goods which are not available for confiscation is not in accordance with the law and the same is set aside. At no point of time the appellant disclosed the fact that the goods imported for a particular project were not used in the project but was used elsewhere. Thus there is clear suppression of facts on the part of the appellant. At the time of reconciliation as per Regulation 7 also the appellant did not disclose the information and in fact gave a wrong declaration. If that be so, the appellant cannot escape the consequences of such mis- declaration and, therefore, we do not find any merit in the argument of the appellant that they are not liable to penalty or the goods are not liable to confiscation. In as much as duty has been evaded in respect of such projects, the demand of duty under Section 28 of the Customs Act invoking the extended period of time is justified and imposition of equivalent amount of penalty under Section 114A is also justified.

5.15. The argument of the bona fide belief raised by the appellant does not seem to be convincing. If the appellant is claiming bona fide belief, it is for them to establish that they were entitled to hold such a belief based on interpretation of law as pronounced by any judicial fora. In the case before us we do not find any reason

for entertaining such a belief nor any judicial pronouncement to hold such belief has been cited before us. Bona fide belie is not blind belief. In the case of Andhra Pradesh Electricity Board [1984 (16) ELT 579 (Tril-.)], this Tribunal held that bonafide belief does not mean blind belief or a self-opinionated belief. It would imply a belief which has been reached after a sincere attempt to understand the issue and examining it reasonably. Similarly, in the case of Inter Scape [2006 (198) ELT 275 (Tri.)] this Tribunal held that belief can be said to be bonafide only when it is formed after all reasonable consideration are taken into account. It is not the case of the appellant that they sought legal advice in the matter or were so advised by any one. On the contrary, we find that there are a number of judicial pronouncements which prohibited diversion of goods from one project to another and, therefore, the plea of bona fide belief does not sustain.

5.16. The next issue for consideration is whether the goods are liable to confiscation and whether fine can be imposed in lieu of confiscation and whether penalties can be imposed on the appellant. In this context it should be remembered that in respect of 12 contracts where the assessments were provisional, the goods were released to the appellant on the strength of a bond and bank guarantee submitted by the appellant. In other words, it was only a provisional clearance. At the time of final assessment, when the violations were noticed of the Project Import Regulations, Section 11 1(o) of the Act comes into play for violating the end-use terms and conditions of the exemption. Therefore, as has been held by the Hon'ble apex Court in the case of Jacksons Thevara, cited supra, the goods are liable to confiscation and the appellants are also liable to penalty and, therefore, imposition of fine on the goods and imposition of penalty on the appellant is not prohibited in law. The Hon'ble apex Court in the case of Weston Components vs. Commissioner [2000 (115) ELT 278 (SC)] upheld the confiscation and imposition of fine on the confiscated goods when the goods had been released on the execution of a bond and bank guarantee. The situation is identical in respect of project imports also and, therefore, goods are liable to confiscation and imposition of redemption fine is in accordance with law. Therefore, we do not find any infirmity in the imposition of fine by the adjudicating authority or the imposition of penalty on the appellant under Section 112(a) of the Customs Act. In the Weston Components Ltd. case [2000 (115) ELT 278 (SC)] the Hon'ble apex Court held that:

> "if subsequently it is found that the import was not valid or that there was any irregularity which would entitle the Customs authorities to confiscate the said goods, then the mere fact that the goods were released on the bond being executed, would not take away the power of the Customs authorities to. levy redemption fine."

The fine of Rs. 1 crore imposed is not unreasonable as the duty sought to be evaded is also of the same order and that would have been the profit accruing to the appellant in case they had succeeded in their efforts. However, the penalty of Rs. 50 lakhs imposed on the appellant is quite high. Considering the fact that the issue related to interpretation of the scope of a tariff entry, a nominal penalty should suffice and therefore we reduce the penalty from Rs.50 lakhs to Rs.10 lakhs.

6. In view of the foregoing, we do not find any merits in the appeal and the same is accordingly dismissed. However, the fine is reduced from Rs.1.25 crore to Rs.1 crore and penalty is reduced from Rs. 50 lakhs to Rs.10 lakhs, for the reasons enumerated above.

(Pronounced in Court on /12/2012)

Per: Anil Choudhary, Mr. :

7. I have had opportunity to go through the order recorded by my learned brother Shri P.R. Chandrasekharan, Member (Technical), but with all humility, I differ with the view taken by learned Member (Technical).

8. To appreciate the facts, we have to appreciate the scheme of Project Import Regulation.

8.1. As heavy customs duty was normally leviable on import of machinery for projects, which made the initial project cost very high and at times, the project may become unviable; hence the scheme of project import was introduced by Govt. to bring machinery etc. required for initial set up or substantial expansion at concessional customs duty. The concept of concession in customs duty for project(s) was introduced way back in 1965 when the country was in the need of set up of major projects and industries for industrialization of the country. The provision was made for import under the specified heading 9801 of the Customs Tariff Act for items like machinery including prime movers, instruments, apparatus and appliances, control gear and transmission equipments as well as, components or raw materials for manufacture of machinery and their components required for initial set up of a unit or substantial expansion of specified industrial project, power project etc. Thus, it is a fact that not only machinery can be imported for setting up of a new industry or plant, but even raw material for fabrication of plant and machinery can also be imported. There cannot be same standards of compliance for import of machinery and/or import of raw material for fabrication of plant and machinery.

8.2 The appellant is a manufacturer of transformers etc. which are normally required for power plant and/or captive power plan. The appellant has given details of time taken at various stages for import of raw material for fabrication and supply of the machinery by the eligible power project under the Project Import Regulations. By filing the complete set of documents in the case of purchase order received from `Nicco Corporation Ltd.' with respect to designing, manufacturing and supply of 33 KV/ 11.5 KV, 10MVA power transformer to be installed at Gas Cleaning Plant (Wet Type for Earth Furnace) at Durgapur Steel Plant, Durgapur, a unit of SAIL. The documents at Annexure A to G showing the various stages and the time normally taken has been compiled in `Exhibit-H' of the Appeal Memo, which explains as under: -

Annexure	Details of Document	Date of Document	Period taken (months)
1	Purchase Order No. C118/P/E/0006 raised by M/s. NICCO Corporation Limited	28.02.1995	
2	Project Essentiality Certificate issued by GM- Projects, Steel Authority of India, Durgapur Steel Plant	14.06.1995	3
3	Application made by Bharat Bijlee Ltd. to the Industrial Advisor, Dept of Ind. Development, Electrical Industry Section, New Delhi	16.07.1995	1
4	Recommendation letter issued by Min. of Industry addressed to the Commissioner of Customs	01.05.1996	9
5	Application to the Collector of Customs, Bombay for registration of Project import Contract	20.05.1996	
6	Security Deposit made for above	08.07.1996	
7	Import of material under Project Import at concessional rate of duty	10.07.1996 05.09.1996 20.01.1997	2
8	Date of Manufacture of Transformer	18.08.1995	
9	Date of dispatch of Transformer	20.10.1995	
	TOTAL		15 months

Total period taken from the date of Purchase Order till actual import of material	15 months
Time taken for manufacturing activity (approx)	3 months
Total	18 months
Period of contractual delivery as per Purchase Order (Refer point no. 8 of the PO)	6 months
Liquidated damage @ 0.5% (minimum) of value (Rs.26,20,000/-) per week of delay	6,28,800/-
LD @ 5% (maximum) of value per week of delay	62,88,000/-

8.3 From the purchase order at Exhibit-A, it is evident that the purchase price as per purchase order is Rs.26,20,000/- to be delivered ex-works which includes packing and forwarding charges. Clause 9 of the purchase order read with clause 8 provides that delivery period is 6 moat) s from the date of placement of Letter of Intent (LOI) or order whichever is earlier and will be subject to liquidated damages for delay which will be payable @ 0.5% per week subject to a maximum of 5% of the value of order.

8.4 Thus, it is evident that time was the essence of the contract. Timely completion of the purchase order by the appellant was in national interest so as to facilitate timely completion of the project to avoid the evils of cost over run and the technology becoming out of date or absolete. At the same time, delay also results in loss of production which increases the cost of project. The appellants have explained that the raw materials required for manufacture of electrical transformers are mainly; CRGO electrical steel sheets in coils, electrolytic copper rods, electrical grade insulating materials and free-compressed press boards and the same were required to be imported, as the same were not manufactured in India. The aforesaid raw materials were imported for completion of various orders mainly through three channels, being: -

(i) on payment of duty,

(ii) Duty free under advance licences/DEEC scheme,

(iii) Under the Project Import Regulation, 1986.

8.5 The normal time required for import of the requisite raw materials for fabrication (under the Project I. Scheme) of a transformer is about 15months, which is evident from the Exhibition (reproduced above) and thereafter the time of about

3 months is required for fabrication. Therefore the appellant has to wait for about 15 months for getting the raw materials and thereafter further 3 months for fabrication and thereafter another 1 month for testing etc. The machinery required for power plant cannot be fabricated and/or supplied before 20 months.

8.6 The appellants explained that there is no stamping on the raw materials received under the three channels as explained above. If the raw materials imported through one or more channels are kept s ice by side, it cannot be distinguished which raw material is imported under DEEC scheme or under Project Import Regulation or duty paid they being same/similar in each and every respect. Therefore, as a business-man of ordinary prudence in order to meet the delivery date specified in the purchase order, the appellant started the process of import of raw material as per the purchase order, for the power project but, without waiting for the specific import, which would have been taken a long time as explained above, started production with available raw materials in hand/ stock and have supplied the fabricated transformer for the eligible power project. Further, as required under the Provision of Project Import Regulations, the appellants have passed on the benefit of concessional rate of duty available for the import of specified raw materials, to the customers/ project.

8.7 From perusal of the show-cause notice, it is seen that there are basically three allegations against the appellant. The first being goods imported under the Project Import Scheme are not used for the specified project, second-for the purpose of project, raw materials have been imported in excess than actually required for the fabrication of the transformers required for the project, and thirdly the fabrication was started and or completed and supplied even before the arrival of the raw material at concessional tariff under the scheme, in some cases.

8.8 From the findings recorded by the Commissioner, it is seen that the Commissioner have taken a view that as the fabrication was started in soy ne cases prior to arrival of the requisite raw material under the scheme or in some case even fabrication of the transformer was completed and supply made before the arrival of the requisite raw material. The Commissioner has taken the view by quoting regulation 4 of the Project Import Regulation, 1986 that one-to-one correlation is essential for eligibility for availing the concessional tariff of duty. The Commissioner has relied on the judgment of NRB Bearings (supra). The same is distinguishable because in that case pre-fabricated machineries were imported and installed elsewhere, wherein in the present case raw materials have been imported for fabrication of the transformers.

8.9 The appellant as a person of ordinary prudence, instead of keeping the factors of production idle for 15 months, have utilized the similar raw material in hand and have completed the fabrication and supplied the transformer for the approved

power project in time and as such have made substantial compliance of the statute. There is no other allegation or adverse finding in the impugned order of the Commissioner except that the transformers were fabricated and supplied in some cases before the actual arrival of the requisite raw material for that contract, under the scheme. There is no other mischief found or pointed out in the order on the part of the appellant like import of excess raw material or disposal of imported raw material clandestinely in the open market.

8.10 I am inclined to agree with the argument of the appellant that the eligibility criteria of a notification has to be strictly construed, but once the assessee is found to be eligible, the other conditions c f the notification should be given a liberal interpretation as held by the Apex Court in the case of Tullow India Operations Ltd. (supra).

8.11 It is never the intent of the legislature to give some benefit by one hand only to be taken back by another hand.

8.12 That reliance placed by Revenue on the ruling of Apex Court in the case of Jacksons Thevara vs. Collector of Customs & Central Excises not tenable. As in that case the machinery was imported for expansion by a partnership firm, which was transferred to a Pvt. Ltd. Co. (being a different entity), hence concessional rate was held, not available.

8.13 Further, Revenue have relied on the Ruling of the Apex Court in the Commissioner of Central Excise us. Modi Rubber Ltd. 2001 (135) ELT 515. In this case the issue related to availment of proforma credit of duty on inputs utilized for manufacture of tyres & tubes cleared at nil rate of duty. As the availment was denied by Revenue, the same was disputed. It was held that there is nothing in the Notification which enables input duty credit to be maintained 8v availed of, merely because their puts are used in the manufacture of finished products, as the underlying intention was to reduce the cascading effect of duty only.

8.14 In the case of beneficial legislation, once the `eligibility criteria' is met for the other allied conditions a "purposive interpretation" needs to be adopted. Where e.g. water is required to be drawn from a tank for irrigation, it is immaterial from which side of the tank water is drawn for irrigation.

8.15 In view of the aforementioned observations, I hold that the appellant have complied with the conditions of the `Project Import Regulations' and the benefit of concessional duty cannot be denied.

9. Thus the impugned order is set aside and quashed. The appeal is allowed.

The difference of opinion as detailed below is placed before the Hon'ble President/HOD for reference to the 3rd Member:-

(a) Whether the appellant is not eligible for the benefit of Project Import Concession under CTH 9801 and consequently the imported goods are liable to confiscation with option to redeem the same on payment of fine and the appellant is liable to penalty as held by the Hon'ble Member (Technical) placing reliance on the decision of the Hon'ble Supreme Court in the case of NRB Bearing Ltd., 2003 (159) ELT 755, Jacksons Thevara, 1992 (61) ELT 343 (SC), Shankar Raju Vs. Union of India, 2011 (271) ELT 492 (SC) and Mihir Textiles Ltd., (1997 (92) ELT 9 (SC)

OR

(b) The appellant is eligible for the benefit of project import concession under CTH 9801 as held by the Hon'ble Member(Judicial) on the ground that the above decisions of the Hon'ble Supreme Court are not applicable to the facts of the case.

Per: P.K. Jain, Member (Technical)

10.1 The case was heard extensively on 29.8.2013. For the sake of brevity I am not repeating the arguments advanced by both the sides which are already found part of the orders recorded by my learned brothers. However, additional submissions and case laws emphasized are discussed below.

10.2 The learned advocate for the appellant submitted that for the manufacture of transformers they require CRGO electrical sheets, and if they would have followed the prescribed procedure, the Project would have got delayed. However, they completed the Project with either duty paid material or material imported duty free under Advance License or material imported for some other Projects. There is no allegation from the Department that the Projects were not completed. The learned advocate also argued that the intended object of the Project import Scheme is to complete the Project in time. That was done in their case, therefore there cannot be any question of evasion of duty. Appellants have not diverted the imported material in the market for any material gain and therefore it cannot be said that they have evaded the duty. In view of these facts, the purposive interpretation has to be made. He argued that there is no bar or prohibition under the law which required to use the raw material only imported under Project Import. This factual matrix has also to be kept in mind while deciding the case. Learned advocate also submitted that the raw materials loose identity, moment they the store department and therefore the whole concept of using the same material for a Project and for that Project only is

irrelevant. Such a concept may be okay in respect of capital goods but the same yardstick cannot be applied for the raw material.

10.3 The learned counsel quoted the Hon'ble Madras High Court judgment in the case of Tamil Nadu Small Industrial Corporation Ltd vs CCE, Chennai reported in 2009 (234) ELT 412 (Mad) to further his argument that purposive interpretation should be adopted to effectuate main intention of the Notification. He also quoted the judgment of the Hon'ble Madras High Court in the case of M/s Nirma Ltd. Vs. Saint Gobain Glass India Ltd. reported in 2012 (281) ELT 321 (Mad) to bring the point fiscal law is to be construed strictly while the Economic Legislation is construed with intention of developing domestic industry. He also quoted the judgment of this Tribunal in the case of Punjab Worsted Spg. Mills Vs. CCE, Chandigarh Reported in 2001 (136) ELT 1016 (Tri-Del) to submit that penalty is not imposable in case of provisional assessments which were being finalized.

10.4 On issue of limitation, the learned advocate quoted this Tribunal decision in Sujana Metal Products Ltd. Vs. CCE, Hyderabad reported in 2011 (273) ELT 112 (Tri-Bang). Similarly another judgment of this Tribunal in the case of Mexin Adhesive Tapes vs CCE reported in 2013 (291) ELT 195 (Tri Ahd) was pressed to bring out the point that limitation and penalty cannot be imposed on issues involving interpretation/ discussion of law and rules.

11.1 The learned A.R., on the other hand, stated that the concept of Project Import is not with an idea to extend the benefit of lower duty but is a system of assessment. In a big Project a large number of equipments, materials etc are imported and many a time the value of each and every item is not separately available. Detailed description and specification may not be available. Thus it is even difficult to classify each item. It is in order to simplify the clearance procedure that the concept of Project Import was introduced. The Hon'ble Member (Judicial)'s observation about the concept of a Project Import is to encourage development is not in line with this. Ld. A.R. read the Customs manual on the subject. Ld. A.R. further submitted that exemption notifications are issued to boost industrial development of a particular sector. The learned A. R. further submitted a copy of the application along with the recommendation letter submitted by the applicant to the Industrial Adviser, Ministry of Industrial Development to bring out the point that they have misrepresented to the Industrial Adviser that the said goods are being imported for the initially assembly of capital goods while the ground reality was that they had already assembled in some case and in some other cases were assembling the transformers using the CRGO electrical sheets available with them. The learned A.R. further submitted a copy of letter from the Customs House to further his argument that contract was registered subject to the condition that the goods manufactured out of imported goods shall be installed only for the Project for

which such imported goods were cleared under Project import Regulations, 1986.

11.2 The learned A.R. also submitted that the Hon'ble Supreme Court in the case of Shanker Raju Vs. U.O.I. reported in 2011 (271) ELT 492 (SC) have held that in Court of law or equity, what legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication - Where legislature clearly declares its intent in scheme of a language of statute, it is duty of Court to give it full effect without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature - Hardship or inconvenience cannot alter meaning employed by legislature if such meaning is clear on face of statute - If statutory provisions do not go far enough to relieve hardship, remedy lies with legislature and not in hands of Court.

12.1 I have gone through the orders recorded by both learned brothers as also various submissions made by both sides before me. Classification of goods under the Project Import is with an idea of facilitating the assessment and faster clearance of the goods by Customs in respect of Projects. Chapter V of the Customs Manual which was referred to by the learned A.R. is reproduced below:

> "1. The `Project Import Scheme' is an Indian innovation to facilitate setting up of and expansion of industrial projects. Normally, imported goods have to be classified `on merits' under the Customs and Excise Tariffs for levy of duty. This implies that each individual article has to be classified separately and assessed to appropriate duty not only for the purposes of customs duty but also for the purposes of Countervailing Duty (CVD). For setting up of a `project', a number of goods may be imported in one or many consignments. If all goods required for the project are to be classified and valued separately for assessment to duty, the process becomes cumbersome. This may lead to delay in clearance of goods. Further, the suppliers, while sending goods for a contracted project, do not value each and every item or parts of machinery manufactured and supplied in stages. Ascertaining values for different items further delayed assessment on merits and leading to demurrage and time and cost overruns for the project. The project import assessment provisions introduced in Customs Tariff in 1965 and continued ever since facilitate early and quick assessment by simplifying the process of classification and valuation of goods required for a project.

2. The Project Import Scheme seeks to achieve the objective of simplifying the assessment in respect of import of capital goods and all the related items required for setting up of a project by levy of a flat rate of duty in respect of such goods. This objective has been achieved by incorporating a heading 98.01 under Chapter 98 of the Customs Tariff and prescribing a uniform customs duty rate under this heading. All the goods approved for importation in connection with an industrial project are classified under this heading. Goods classified under this heading cannot be classified under any other heading which may cover the product more specifically.

3. The different projects to which heading 98.01 applies are; irrigation project, power project, mining project, oil/mineral exploration projects, etc. Such an assessment is also available for an industrial plants used in the process of manufacture of a commodity. However, this benefit is not available to hotels, hospitals, photographic studios, photographic film processing laboratories, photocopying studios, laundries, garages and workshops. This benefit is also not available to a single or composite machine. The Central government can also notify projects in public interest keeping in view the economic development of the country to which this facility will apply. This is achieved by issuing a notification. A number of notifications have been issued notifying a large number of projects for assessment under heading 98.01."

12.2 From the above, it is very clear that purpose of classifying any goods under Project Import is for ease of assessment and faster clearance by Customs. The delays on the part of project authority, supplier, other Government authorities cannot be rectified by classification under Project Import. These have to be looked into by respective person.

12.3 However, it is to be noted that the Government has also used the Project Import classification at times to grant a lower rate of duty for certain Projects by issue of exemption notification. Similarly lower rates of duty have been prescribed at times to boost industrialization of a particular sector. However, such steps by the Government are normally through exemption notification. Even when capital goods are imported classifying under Chapters 84,85, 90 or other Chapters, exemption Notifications issued are with a view to encourage industrialization in that particular sector. For example, a lower rate of duty is prescribed for manufacture of jewellery or diamond processing, the same may be with an idea to boost jewellery and diamond processing centers. Thus in my view classification under 98.01 is for case of assessment and clearance by

Customs while exemption notification are with a view to encourage particular sector.

12.4 In the present case, Power Projects have been given a lower rate of duty by exemption Notification No. 90/94-Cus dated 1.3.1994. However, before availing the benefit of said notification goods are required to be classified under Heading 98.01.

12.5 In order to resolve the issue we have to appreciate that Customs duty is charged under Section 12 of the Customs Act, 1962. The said Section reads as under:

> 12. Dutiable goods.
>
> (1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the 2 [Customs Tariff Act, 1975] (51 of 1975) or any other law for the time being in force, on goods imported into, or exported from, India. 2 [The provision of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.]

12.6 It will be seen from the above Section that the Customs duty is chargeable on Import/Export of goods in/from India. Customs duty is not a duty on the importer or exporter but on the goods imported/exported. Duty may be paid by an importer or an exporter because he is importing/ exporting the goods and all the benefits/ obligations etc relating to said goods are with the importer/ exporter. If any goods are allowed to be imported, subject to certain conditions, those conditions are required to be fulfilled in respect of the goods imported. Liability or benefit in respect of the imported/ exported goods cannot be shifted to other set of goods imported or exported until and unless these are expressly allowed under the Customs law.

12.7 Hon'ble Member (Judicial)'s main thrust have been that if the importer is asked to follow the procedure, it would take 15 months before he could deliver transformers to the Power Project. The period is based upon an example provided by the appellant. I have seen the said tabulation and I am of the view that period given in the tabulation can be easily curtailed if the importer takes appropriate steps as also does various activities parallelly rather than serially. For example, three months period is taken for getting a Project Essentiality Certificate from General Manager (Projects), Steel Authority of India. In this case the Steel Authority of India are buyers and are executing the Project and before

placing the order to the appellant, would have already examined the details and the requirement (including the CRGO sheet required) and it is beyond one's comprehension why three months period is required to get a Certificate from the Project authority i.e. the Steel Authority of India in this case. Similarly another one month period has been given for making an application. I have gone through copy of the application. There does not appear to be any reason for requiring such a long time because even before getting an order applicant would have estimated how much and what type of CRGO sheets are required. Nine months have been indicated for getting a recommendation letter from the Ministry of Industry. If the appellant has filed all the documents in time and followed up, there does not appear to be any reason for such a long time. In fact to my mind, making an application to Ministry of Industry, placing the order for Import etc. can all be done parallelly. Even application for registering the contract under Project Import on provisional basis can be made even if for some reason there is a delay in getting a recommendatory letter from Ministry of Industry. The goods can be imported and cleared by the appellant provisionally under project import at concessional rate or normal rate (and claim refund later on). The appellant has entered into the contractual delivery and highlighted that he is required to pay damage for delay in supplying the goods in time. The applicant should estimate and indicate a reasonable time to the buyer to execute the Project. The various reasonings given for delay in execution of Project are not on sound footing. In any case these are contractual obligation between appellant and buyer and statutory laws cannot be circumvented in the name of contractual obligations.

12.8 The learned advocate has given a lot of emphasis on purposive interpretation. There can be no two opinions that the purposive interpretation has to be taken. Question is purposive interpretation of the law/ scheme or action of the appellant. I think it is purposive interpretation of law. As explained in para 10 above, Customs duty is charged on the import of goods. The benefits or liabilities of the goods imported are with those goods alone, until and unless law provides for some other exigencies. In the present case, there is no dispute that the goods imported for a particular Project were not used in that Project. These might have been used for goods cleared on payment of duty or in respect of some others project. Heading 98.01 reads as under:-

Tariff Items	Description of goods	Unit	Rate of duty	
			Standard	Preferential Areas
(1)	(2)	(3)	(4)	(5)
9801	All items of machinery including prime movers, instruments, apparatus and appliances, control gear and transmission			

	equipment, auxiliary equipment (including those required for research and development purposes, testing and quality control), as well as all components (whether finished or not) or raw materials for the manufacture of the aforesaid items and their components, required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified: (1) Industrial plant, (2) Irrigation project, (3) Power project, (4) Mining project, (5) Project for the exploration for oil or other minerals, and (6) Such other projects as the Central Government may, having regard :o the economic development of the country notify in the Official Gazette in this behalf; and spare parts, other raw Materials (including semi-finishe3 material) or consumable stores not exceeding 10% of the value of the goods specified above provided that such spare parts, raw materials or consumable stores are essential for the maintenance of the plant or project mentioned in (1) to (6) above.			

12.9 A plain reading of the said description unambiguously states that "raw materials required for the manufacture of all items of machinery including prime movers, instruments etc." are classifiable under the said heading. Obviously, after the import, raw materials has to be used in the manufacture of machinery required for the initial setting up of a unit/ substantial expansion. While there is no stipulation that importer cannot use raw material imported under different Heading for the manufacture of machinery under Project import but there is

definite stipulation that raw material imported under Project Import has to be used in the manufacture of machinery required for that Project.

12.10 I also note that Hon'ble Supreme Court in the case of Shanker Raju Versus Union of India reported in 2011 (271) ELT 492 (S.C.) has observed as under:-

> "The learned counsel Shri Narasimha submits that the Legislature, while amending Section 8 of the Act, has not placed any bar or embargo or any outer limit of number of years that can be served by a Member of the Tribunal. Therefore, a Member of the Tribunal who has served for ten years as a Member is still eligible to apply and participate in the selection process for being appointed as a Member. Though the argument advanced looks attractive, but on a deeper consideration, we find no merit in the contention canvassed by the learned counsel. In our view, the language employed in the Section does not admit any ambiguity. The language of the Statute is clear and unambiguous. Section 8 (1) of the Act provides the term of office of Chairman of the Tribunal, which shall be five years from the date he assumes his office. The proviso qualifies and carves out an exception to one` main enactment. The exception is, though a Chairman can hold office as such for a term of five years, he cannot hold such office after he attains the age of sixty-eight years. Sub-section (2) of Section 8 of the Act provides the "Term of Office" of a Member of the Tribunal, first part of the Section envisages that a member of the Tribunal shall hold the office for a `term of five years'. The term as applied to an office, refers to a fixed and definite period of time that an appointee is authorised to serve in office. Alternatively, it can be said that the term of office that is used by the Legislature could only mean the period or limit of time during which the incumbent is permitted to hold the office. The second part of the Section gives discretion to the appointing authority to extend the term of office of a member of the Tribunal to one more term of five years. The expression `extendable', that finds a place in the sub-section, could only mean that the term of office of an incumbent as a member of the Tribunal can be extended if the parties agree. The proviso appended to the sub-section again carves out an exception to the main provision and restricts a member for holding office after he has attained the age of sixty five years. The proviso takes care of a situation where a member whose term of office is extended for a further period of five years cannot hold such office if he has attained the age of 65 years during the extended period of five years. A combined reading of both parts of Section 8(2) of the Act clearly demonstrates that a member of a Tribunal can hold such office for a fixed and definite period of time, i.e. for a period of five years from the date on which he enters upon his office and that period

may be extended for one more term of five years. What is contended before us by the learned counsel for the petitioner is that there is neither prohibition nor any embargo for a member who has completed 10 years as Member to participate in the selection process for being appointed as a Member of the Tribunal for another term of five years. This, in our opinion, is impermissible since the total term that a person can hold the office of the Member of the Tribunal is only for a period of 10 years. In our view, if the office is created by the Legislature under due authority, it may fix the term and alter it. We can understand the heart burn of a person who has served as Member of the Tribunal for ten years and. thereafter, is ineligible for being appointed as a Member of the Tribunal. We cannot help this situation. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact either in express words or by reasonable and necessary implication. It is apt to remember the words of Lord Salmon in IRC v. Ross Minister Ltd. (1979) 52 TC 160 (HL). It is stated, "however, much the courts may deprecate an Act, they must apply it. It is not possible by torturing its language or by any other means to construe it so as to give it a meaning which Parliament clearly intend it to bear."

We may also add that where the Legislature clearly declares its intent in the scheme of a language of Statute, it is the duty of the Court to give full effect to the same without scanning its wisdom or policy and without engrafting, adding or implying anything which is not congenial to or consistent with such express intent of legislature. Hardship or inconvenience cannot alter the meaning employed by the Legislature if such meaning is clear on the face of the Statute. If the Statutory provisions do not go far enough to relieve the hardship of the member, the remedy lies with the Legislature and not in the hands of the Court."

12.11 The CRGO electrical sheets can be imported and cleared on payment of duty under chapter 72. Alternately, the same CRGO electrical sheets can be imported and classified under heading 9801, if condition in the said heading are met. Such CRGO electrical sheets can be cleared at appropriate rate applicable to Project Import. Once, importer decides one of the two classifications for clearance purpose, he has to follow the rigours for that particular heading. In the present case, the importer had decided to clear the CRGO sheet under heading 9801, therefore, has to follow rigours of heading 9801. Description under Heading 9801 makes it clear that the raw material imported under Project Import is to be used in the manufacture of machinery which is required for that Project. Raw material imported cannot be used for the manufacture of machinery which is cleared for some other Project or other use. The law does not permit flexibility to inter-change material imported under the Project Import for some other purpose

and therefore, CRGO electrical sheets imported for a particular Project, cannot be used for any other purpose including for some other Project.

12.12 I find that Ld. Advocate has given lot of emphasis or purposive interpretation of law. When the law is clearly written and there are no two interpretation of that law, the concept of purposive interpretation of law cannot be other than what the law states. In my view, appellant is trying to justify his actions in the name of purposive interpretation. As explained earlier, Customs Duty is duty on the import of goods. Associated conditions, obligation and benefits are related to those goods alone here appellant has given false declarations to get the letter from Ministry of Industry violated the conditions on which contract was registered under Project Import Regulation and now on being caught is justifying the action as purposive interpretation of law.

12.13 Learned advocate has quoted Hon'ble Madras High Court judgment in the case of Tamil Nadu Small Industrial Corporation Ltd vs CCE, Chennai (supra). In the said case the appellant was having number of manufacturing units. Issue was whether each factory can get benefit of SSI exemption under Notification 175/86 or not. An explanation was added in the said Notification, clarifying that where the specified goods are manufactured in a factory, belonging to or maintained by the Central Government, or by a State Government, or by the Khadi and Village Industries Commission, then the value of excisable goods cleared from such factory alone shall be taken into account. Question was whether explanation will have a retrospective effect. It is in this context that the Hon'ble Madras High Court had held that the purposive interpretation of notification is required to be adopted. From the plain reading of the said explanation, it is clear that intention is to encourage the Central Government or State Government or KVIC to setup units. In the present case, I do not find anything express or implied either in the heading 9801, or exemption notification so as to justify the appellant's action. Another case quoted by learned Advocate, is Hon'ble Madras High Court judgment in the case of Nirma Ltd. Vs. Saint Gobain Glass India Ltd. (Supra). This case was relating to Anti-Dumping duty and in that context, the Hon'ble High Court of Madras held that the purpose of Anti-Dumping duty is to safe guard the domestic industry and therefore had to be considered as an Economic Law rather than a fiscal law and it is well settled that the fiscal law is to be construed strictly while the economic legislation must be construed with intention of developing the domestic industry. In the case, it is the fiscal law. As noted earlier as per provisions of heading 9801 as also Section 12 of the Customs Act, 1962, imported raw materials are to be used for a particular project and therefore cannot be used for any other purpose including other projects. In my view, case laws quoted by learned Advocate is not helping the case of appellants. The law very clearly tells about the usage of goods imported. In such a situation we cannot take other interpretation.

12.14 The Id. Advocate quoted, the Hon'ble Supreme Court judgment in the case of Commissioner of Customs (Imports), Mumbai Vs. Tallow India Operations Ltd. reported in 2005 (189) ELT 401 (S. C.). In the said case, there was delay in getting the essentiality certificate from D.G. Hydrocarbons and therefore said certificate could not be produced at the time of importation. It is in that context that the Hon'ble Supreme Court has stated that if it is not within the power and control of importer and depends upon acts of other public functionaries, non-compliance of such condition, subject to just exception cannot be held to be a condition precedent which would disable it from obtaining benefit therefrom for all times to come. Clearly the said judgment is relating to procedure delay is getting certificate and not applicable to the present case. In the present case goods imported and cleared under heading 9801 were not used for the Project. Procedural delay cannot be compared with diverting or not using the goods imported for the Project. Similarly, another case quoted by the learned Advocate is ONGC Ltd. Vs. Commissioner of Customs, Mumbai reported in 2006 (201) ELT 321 (S.C.). Here again the delay was in production of essentiality certificate. As mentioned earlier, case relating to delay and that of not using the goods imported under Project Import for the Project, are two different things and are not comparable. Another judgment quoted by the learned Advocate is Zuari Industries Ltd. Vs. Commissioner of Central Excise & Customs reported in 2007 (210) ELT 648 (S.C.). In this case, during expansion of a fertilizer plant, a power plant was also being setup. The question was whether the power plant can be considered as part of fertilizer plant or is an independent plant. It is in this context the Hon'ble Supreme Court has taken a view that power plant can become part of entire Project, and it can also be independent power plant. I do not find anything similar in the present case. Another judgment quoted is BSES Kerala Power Ltd. Vs. Commissioner of Customs, Cochin reported in 2006 (196) ELT 246 (Tri. - Bang.). In this case certain goods were imported under Project Import. After installation, few items imported were found to be defective. Importer imported new items to replace the defective part from other supplier. Since the new parts were required to replace defective parts, this Tribunal has allowed the benefit of project import on the new items. In fact, heading 9801, specifically allows spare parts under project import. In the present case, the issue is use of imported raw material for purpose other than the project for which such raw materials were imported.

13.1 Ld. A.R. during the arguments produced the sample copy of the application submitted by the appellant to the Ministry of Industry. It is seen in Part B the appellants have made the following declarations:-

> "2. We confirm that the raw materials/ components in Part C are being imported for the initial assembly of capital goods mentioned above.

3. We do confirm that the raw materials/ components in Part C shall not be used either as spares/ replacements or in the manufacture of sub-assemblies required as spares/ replacement.

5. We shall be liable for any legal action and penalties as per the relevant Customs Tariff Act as amended form time to time in case of diversion of the goods imported under concessional duty or misuse of the imported material."

It is very clear that even before placing the order, the appellant have declared that the raw material is being imported for the initial assembly of capital goods required for the Project. The appellant have also made declaration that they shall be liable for any legal action and penalties as per the relevant Customs Tariff Act as amended form time to time in case of diversion of the goods imported under concessional duty or misuse of the imported material. Further after getting the recommendation letter when the Project is registered in the Customs House, in communication for registration, the Customs House had made it clear that appellant should submit a declaration that imported goods or goods manufactured out of imported goods shall be installed only for the Project for which such imported goods were cleared under Project Import Regulations, 1986. Relevant declaration is:

"3. You should also submit a declaration from the Project Authority that imported goods or goods manufactured out of imported goods shall be installed only for the Project for which such imported goods were cleared under Project Import Regulations, 1986."

From the declaration made by the appellant to the Ministry of Industry and also the communication from the Customs House, department was mislead to believe that the material is being imported for the manufacture of capital goods. Further these capital goods shall be installed only for the Project for which such imported goods were cleared under Project Import Regulations, 1986. Further, from the declaration made by the appellant, it is clear that they knew that they shall be liable for any legal action in case of diversion of the goods imported under concessional duty or misuse of the imported material. In the present case it is an admitted position that imported electrical sheets were not used in the manufacture of transformers which were sent for the particular Project for which these were imported. The electrical steel sheets were diverted for the manufacture of other goods which were supplied to various customers, perhaps for some other Projects also. Under these circumstances, the action of the appellant is contrary to the declaration given to the authorities and it cannot be said that the appellant was not aware of the said provisions. Therefore, there can be no doubt that the imported goods are liable to confiscation, and the appellant is liable to pay redemption fine and penalty.

13.2 In the appeal memorandum, the appellant has made the submission that in case of provisional assessment no penalty is imposable. Section 18 of the Customs Act, which deals with provisional assessment does not stipulate that penalty cannot be imposed. Similarly, Section 112 or 114A do not stipulate that penalty cannot be imposed in case of Provisional Assessment. Ld. Advocate's contention is without basis. In case of violation of Section/Rules, penalty is imposable. Further in case of provisional assessment in Project Import is resorted as large number of goods are imported in various consignment over a period of time the customs authorities have to ensure that these are within the contracted quantity, value etc. The purpose of provisional assessment was not relating to the fact that whether or not to classify the goods under heading 98.01. Classification of goods under 98.01 was based upon false declaration. Under these circumstances, the confiscation, fine and penalty are imposable in the facts of the present case.

13.3 Another case quoted by the learned Advocate is the case of Punjab Worsted Spg. Mills Vs. Commissioner of Central Excise reported in 2001 (136) ELT 1016 (Tri. Del.) to bring the point that no penalty is imposable is case of provisional assessment. In the said case the provisional assessment was made relating to Trade Discount. At the time of finalizing the provisional assessment, appellant could not prove that certain trade discounts were passed on to certain buyers. It is this context, Tribunal took a view that penalty is not imposable in provisional assessment. Sujana Metal Products Ltd. Vs. Commissioner of Central Excise, Hyderabad reported in 2011 (273) ELT 112 (Tri.-Bang.) is another case quoted by Ld. Advocate. This case was relating to supplies from DTA unit to developer in SEZ and amendment of Rule 6 (6) of CENVAT Credit Rule, 2004 was carried on 31.12.2008. Tribunal took a view that amendment is retrospective in nature. Further, in the said case, the Tribunal has taken a view that the issue involved interpretation of statutory provisions and in such case, there is no question of invoking extended period on ground of suppression. Another judgment of this Tribunal quoted by Ld. Advocate is Mexin Adhesive Tapes Vs. CCE reported in 2013 (291) ELT 195 (Tri-Ahd). The issue involved was whether particular goods are covered under Section 4A or not viz. M.R.P. based assessment. The Tribunal has taken a view that the issue involving interpretation of law and rules, no evidence of intention to evade duty by suppression of facts, misdeclaration, fraud etc. hence extended period was not invocable nor penalty is imposable.

13.4 Facts of the present case are totally different. Appellants have cleared goods/obtained Recommendatory letter based upon false declaration, knowing the implications. There is no interpretation of law involved. This is clear from the declaration given by them.

14. In view of the above, I agree with view of Hon'ble Member (Technical) that the appellant is not eligible for the benefit of Project Import Concession under CTH 9801 and consequently the imported goods are liable to confiscation with option to redeem the same or payment of fine and the appellant is liable to penalty.

(Pronounced in Court on 04 /10/2013)

MAJORITY ORDER

15. In view of the majority decision, the appeal is dismissed. However, the fine is reduced from Rs. 1.25 Crore to Rs. 1 Crore and Penalty is reduced from Rs. 50 lakhs to Rs. 10 lakhs.