

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH, KOLKATA**

Appeal No. C/150/2008

**Arising out of Order-in-Appeal No.KOL/CUS/CKP/75/2008, Dated:
24.02.2008**

Passed by the Commissioner of Customs (Appeals), Kolkata

Date of Hearing: 28.11.2018

Date of Decision: 28.11.2018

M/s LARSEN AND TOUBRO LTD

Vs

**COMMISSIONER OF CUSTOMS (PREV.)
KOLKATA**

Appellant Rep by: Shri J P Khaitan, Snr. & Shri Sourabh Bagaria, Advs.

Respondent Rep by: Shri A K Singh, AC AR

CORAM: P K Choudhary, Member (T)

V Padmanabhan, Member (T)

Cus - The assessee imported Hydraulically Operated Self-Propelled Piling Rig with accessories - The dispute is regarding the interpretation of Notfn 20/99-Cus and in particular Condition No.75, subject to which the assessee had originally imported equipments required for road construction - It is not in dispute that the assessee imported the goods for use in road construction projects for which the assessee procured contracts from Ministry of Surface Transport as well as from Govt. of Tamilnadu - The demand for customs duty has been raised in view of the fact that the goods were sent to Bangladesh before the completion of five years period specified in condition no.75 of the Notification ibid - This condition of Notfn binds the importer to use the imported goods exclusively for construction of roads and further that such equipments should not be sold or otherwise disposed in any manner for a period of five years - It is not in dispute that the imported goods were not used for construction of road in India - But the fact that the goods have been sent to Bangladesh, has been considered as disposal of goods prior to completion of mandatory period of five years - The goods were exported to Bangladesh after completion of road construction project contract by assessee with Ministry of Surface Transport as well as Government of Tamilnadu - The goods were exported to Bangladesh not by way of sale or by way of transfer in any other manner - The goods title in goods continued to remain vested with assessee as is evident from the facts when the goods were reimported, the Bills of Entry were filed by assessee - Hence, assessee has not violated the conditions attached to the Notfn 20/99-Cus ibid - In any case the Notfn 94/96-Cus extends the benefit of 'Nil' rate of duty for the goods which are reimported into India subject to the condition that such goods are the same as were

exported - There is no dispute that the goods re-imported on 20.1.2005 were nothing but the same goods which were exported on 16.02.2004 - As such, no justification found for demand of customs duty on such goods either in terms of Notfn 20/99-Cus or in terms of Notfn 94/96-Cus. - The impugned order is set aside: CESTAT

Appeal allowed

Case law cited:

Commr. Of Cus.(Import), Mumbai vs. Dilip Kumar & Company - 2018-TIOL-302-SC-CUS-CB... Para 4

FINAL ORDER NO. A/76988/2018

Per: Bench:

The present appeal is against the Order-in-Appeal No.KOL/CUS/CKP/75/2008 dated 24.02.2008. The brief fact of the case is that the appellant imported Hydraulically Operated Self-Propelled Piling Rig with accessories. The equipments were imported at Chennai vide Bill of Entry dated 06.07.1999 and 02.08.1999. At the time of import the appellant claimed the benefit of Notification No.20/99-Cus dated 28.02.1999. They claimed the benefit under Sl.No.169 of the Notification which granted duty free import in respect of goods specified which were required for construction of roads, subject to satisfying condition 75 of the Notification.

The condition specified is reproduced below:

"75. If-

(a) The goods are imported by-

(i) The Ministry of Surface Transport, or

(ii) A person who has awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government or by a road construction corporation under the control of the Government of State or Union Territory;

(b) The importer, at the time of importation, furnishes an undertaking to the Assistant Commissioner of Customs to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation; and"

At the time of importation an undertaking as outlined above was furnished to the Assistant Commissioner of Customs.

2. The machineries were imported and used for execution of contracts awarded to the appellant by the Government of India, Ministry of Surface Transport and the Government of Tamilnadu, Department of Highways.

3. After completion of the above constructions, the appellant exported these equipments to Bangladesh on 15.03.2004 for use in the civil and engineering works in the cement plant being set up by L&T in Bangladesh. Subsequently, the machineries were reimported into India on 20.01.2005 through Kolkata Port. At the time of import, the Customs Authorities noticed that the appellant had not completed the period of five years as outlined in condition 75 of the Notification *ibid* before export of such equipments. For violation of the condition of the Notification No.20/99, the appellant was directed to discharge the customs duty. The same was paid under protest and subsequently they claimed refund of the customs duty paid, which stands rejected by the Assistant Commissioner, Customs. Through the impugned order, the Commissioner (Appeals) upheld the rejection of such refund claim. Aggrieved by the decision of the rejection of the refund, the present appeal has been filed.

4. Shri J.P.Khaitan, Ld. Sr.Advocate on behalf of the appellant argued the following points;

*i) The equipments for road construction were imported by the appellant under the Notification No.20/99-Cus *ibid*. The necessary undertaking as per the Notification was also furnished. He emphasized the fact that the appellant imported the equipments for use in the contracts received by them from Government of India, Ministry of Surface Transport as well as Roads Department of Tamilnadu.*

ii) Only after completion of the contract as above, the appellant had exported the equipments to Bangladesh. In this regard he pressed that the goods were exported only for use in the appellant's own contracts in Bangladesh. He states that the goods were never sold or otherwise disposed of in any other manner.

iii) Even though the period of five years was not completed before the export of such goods to Bangladesh, he submitted that conditions of the Notification were not violated in as much as the goods continued to be with the appellant. As such he submitted that there was no scope for Customs Department to demand duty on these equipments.

*iv) He also relied on the decision of the Hon'ble Supreme Court in the case of Commr. Of Cus.(Import), Mumbai vs. Dilip Kumar & Company [2018(361) ELT 577 (S.C.)] = **2018-TIOL-302-SC-CUS-CB** and submitted that the appellant was eligible for the benefit of the Notification.*

v) He also submitted that the goods when re-imported were entitled to duty-free clearance as per Notification No.94/96-Cus dated 16.12.1996 (Sl.No.3)

5. Ld. DR justified the impugned order. He emphasised that the conditions of the Notification are required to be interpreted strictly. The Notification specifies that the imported goods shall be used exclusively for the construction of roads and shall not be sold or otherwise disposed in any manner for a period of five years from the date of import. Since this

condition is not satisfied in as much as the goods were exported prior to the completion of five years period, he submitted that the impugned order may be sustained.

6. We heard both sides and perused the appeal records.

7. The dispute in the present case is regarding the interpretation of the Notification No.20/99-Cus and in particular Condition No.75, subject to which the appellant had originally imported equipments required for road construction. It is not in dispute that the appellant imported the goods for use in road construction projects for which the appellant procured contracts from Ministry of Surface Transport as well as from Govt. of Tamilnadu. The demand for customs duty has been raised in view of the fact that the goods were sent to Bangladesh before the completion of the five years period specified in condition no.75 of the Notification *ibid*. This condition of the Notification binds the importer to use the imported goods exclusively for the construction of roads and further that such equipments should not be sold or otherwise disposed in any manner for a period of five years. It is not in dispute that the imported goods were not used for the construction of road in India. But the fact that the goods have been sent to Bangladesh, has been considered as disposal of the goods prior to completion of the mandatory period of five years.

8. We have noted that the goods were exported to Bangladesh after completion of the road construction project contract by the appellant with the Ministry of Surface Transport as well as Government of Tamilnadu. More importantly we note that the goods were exported to Bangladesh not by way of sale or by way of transfer in any other manner. The goods title in the goods continued to remain vested with the appellant as is evident from the facts when the goods were reimported, the Bills of Entry were filed by the appellant. Hence, we are of the view that the appellant has not violated the conditions attached to the Notification No.20/99-Cus *ibid*.

9. In any case the Notification No.94/96-Cus dated 16.12.1996 extends the benefit of 'Nil' rate of duty for the goods which are reimported into India subject to the condition that such goods are the same as were exported. There is no dispute that the goods re-imported on 20.1.2005 were nothing but the same goods which were exported on 16.02.2004. As such we find no justification for demand of customs duty on such goods either in terms of Notification No.20/99-Cus or in terms of Notification No.94/96-Cus.

10. In the result, the impugned order is set aside. And the appeal is allowed with consequential benefit, if any.

(Dictated and Pronounced in the Open Court on)