IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 6249-6251 OF 2019

COMMISSIONER OF CUSTOMS (IMPORTS) MUMBAI **APPELLANT(S)**

VERSUS

IRCON INTERNATIONAL LTD. & ORS. **RESPONDENT(S)**

O R D E R

We have heard learned counsel for the respective parties.

Having regard to the facts of the case and taking note of the status of the parties, we are not inclined to interfere in the matter.

The Civil Appeals are dismissed.

Pending application(s) shall stand disposed of.

.....J.
(B.V. NAGARATHNA)

.....J.
(NONGMEIKAPAM KOTISWAR SINGHA)

NEW DELHI;
SEPTEMBER 24, 2024

ITEM NO.23 COURT NO.9 SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6249-6251/2019

COMMISSIONER OF CUSTOMS (IMPORTS) MUMBAI Appellant(s)

VERSUS

IRCON INTERNATIONAL LTD. & ORS. Respondent(s)

(IA No. 111840/2019 - STAY APPLICATION)

Date : 24-09-2024 These matters were called on for hearing today.

CORAM :
HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) Mr. K.M. Nataraj, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Ms. Praveena Gautam, Adv.
Mr. Shamik Sanjanwala, Adv.
Mr. Satyalipsu Ray, Adv.
Ms. Shradha Deshmukh, Adv.
Mr. Anirudh Bhat, Adv.

For Respondent(s) Dr. Sandeep Singh, Adv.
Mr. Pahlad Singh Sharma, AOR
Mr. Sushil Kumar Sharma, Adv.
Mr. P. K. Sahu, Adv.
Mr. Vikrant Rana, Adv.
Mr. Kushagra Sachdeva, Adv.
Dr. Nitin Sharma, Adv.

Mr. Akshay Girish Ringe, AOR
Ms. Megha Mukerjee, Adv.
Mr. Dhananjay Gupta, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Civil Appeals are dismissed in terms of the singed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(signed order is placed on the file)

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

APPEAL NOS: C/637, 638 & 713/2010

[Arising out of Order-in-Original No: 55/2010/CAC/CC(I)/SHH dated 6th July 2010 passed by the Commissioner of Customs (Imports), Mumbai.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

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Ircon International Ltd
RP Singh
Batliboi Impex Ltd … ***Appellants***

versus

Commissioner of Customs (Imports)
Mumbai ***…Respondent***

Appearance:

Shri ML Grover, Ms Lalita Phadke and Shri Parash Dharmadhikari, Advocates for appellants

Shri Ahibaran, Additional Commissioner (AR) and Shri Bhushan Kamble, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Dr Suvendu Kumar Pati, Member (Judicial)

Date of hearing: 23/01/2019
Date of decision: 23/01/2019

ORDER NO: A/85337-85339/2019

Per: C J Mathew

Proceedings were initiated against appellants for denying exemption under notification no. 21/2002-Cus dated 1st March 2002 in the import of 'rotary piling rig R-625 serial no. 2553 and its accessories' against bill of entry no. 714621/11.10.2006 and no. 717856/26.10.2006. In the impugned order-in-original no. 55/2010/CAC/CC(I)/SHH dated 6th July 2010 of Commissioner of Customs (Imports), Mumbai, the goods, valued at ₹ 2,87,33,620/- and ₹75,78,038/- respectively in the two bills of entry, were confiscated under section 111(o) of Customs Act, 1962 but permitted to be redeemed on payment of fine of ₹ 90,00,000/- while ordering recovery of ₹ 1,35,08,850/- that was foregone at the time of import under section 28(1) of Customs Act, 1962, read with section 125(2) of

Customs Act, 1962, and imposing penalty of like amount under section 112 of Customs Act, 1962 on the importer. Penalties of ₹ 5,00,000/- were imposed on Shri RP Singh, Deputy General Manager and ₹ 1,00,000/- each on M/s Batliboi Impex Ltd and National Highway Authority of India. We dispose off all these appeals of M/s Ircon International Ltd, M/s Batliboi Impex Ltd and Shri RP Singh by this common order.

2. Narrating the background, Learned Counsel for appellants informs that the said notification at serial no. 230 exempts machines and equipments specified in list 18 appended therein intended for utilization in construction of roads from duty subject to prescribed conditions. It was also submitted that, at the time of importation, an undertaking to use the goods exclusively for construction of roads and that it would not be parted with for a period of five years from the time of importation had been furnished to the customs authorities. It was further submitted that the imports were effected on the appellant-importer being awarded the contract for 'six lining' of Panchi Gujaran to Panipat section of National Highway no.1 in Haryana and that the imported goods had been sent to Patna for executing a project pertaining to construction of 'rail over bridge' as the site for 'six-lining' had not been made available for commencement of execution of the contract awarded to them.

3. According to Learned Authorised Representative, it was incumbent upon the importer to deploy the imported equipment on the project for which the goods were claimed to have been imported. It is further submitted that the transfer to the site of the Patna project was pre-meditated and in breach of their undertaking to utilize the equipment at Panipat. Another contention made on behalf of Revenue is that the project for construction of 'rail over bridge' is not one of those awarded by Ministry of Surface Transport, National High Authority of India, Public Works Department or Road Construction Corporation in the State of Bihar which alone would entitle the importer for the benefit of the exemption. Reliance is placed on the decision of the Tribunal in *Patel Engineering Ltd v. Commissioner of Customs (Import), Mumbai [2013 9295) ELT 243 (Tri.Mumbai)]*, which was upheld by the Hon'ble Supreme Court by dismissing the appeal of M/s Patel Engineering Ltd wherein it was held that construction of roads is a necessary condition for eligibility to the exemption. Placing reliance on the decision of the Tribunal in *Shreeji Construction v. Commissioner of Customs (Import), Mumbai [2014 (313) ELT 566 (Tri.-Mumbai)]*, Learned Authorised Representative contends that benefit of exemption is available only for such entities as were awarded works by any of the instruments that were specifically enumerated in the exemption notification. Furthermore, according to him, the Tribunal, in *Rajhoo Barot v. Commissioner of*

Customs (Import), Mumbai [2017 (348) ELT 562 (Tri.-Mumbai)], emphasised the need for strict construing of the conditions of exemption failing which the benefit could be denied. Drawing our attention to the decision of the Hon'ble Supreme Court in *Gammon India Ltd v. Commissioner of Customs [2011 (269) ELT 289 (SC)]* placing emphasise on strict construction of exemption notification, he contends that the impugned order would have to be upheld.

4. The facts are not in dispute and as the dispute centres on the eligibility to import by availing the exemption notification and confiscation in consequence of alleged violation of post-importation conditions therein, we must look to the contents, and purpose of the exemption notification itself. It is apparent that the sheer scale of investment involved in undertaking road connectivity projects through participation of the private sector did warrant, and prompted, public contribution through exemption from duties of customs on import of equipment that is intended to be deployed.

5. The eligible goods are specifically enumerated and it is not in dispute that the impugned goods are not ineligible. With that objective, it is enshrined therein as assurance that the privilege of exemption is subject to utilization in road development project undertaken by the State or specified instrument of the State and retention with the importer for five years. Such projects are awarded

in portion to contractors and it is not anybody's case that the equipment will find full employment during the execution of the project in entirety. The idling of such resources is as much of a waste as a national loss. It is in acknowledgement of that reality and compulsion that the condition of use in road projects, other than that which conferred eligibility for the privilege on the importer, was also enshrined. This, then, constitutes, along with retention, post-importation conditions that are to be complied with for ensuring continued eligibility for the exemption. The only construction of intent that can be inferred from the structure of the exemption notification is that pre-importation condition entitles the importer to availment of the exemption while the post-importation condition mandates performance; these are mutually exclusive conditions. The decisions cited by Learned Authorised Representative were concerned with one or other and never with both; these are not inconsistent with our conclusion.

6. The principle of strict interpretation of notification espoused by Learned Authorised Representative must be applied in these two distinct contexts. It is not in dispute that the appellant-importer had been awarded with such an eligible contract. The threshold eligibility is thus not contestable. The notification does not stipulate exclusive use in the project that evinces compliance with pre-importation condition. Deployment in other projects undertaken for the

enumerated instruments of the State, as well as on construction of other roads, suffices for compliance with the post-import condition. It is seen from the record that the appellant was prevented from executing the project at Panipat for want of the project site being made available to them. In these circumstances, the pre-importation condition, which is neither included in the undertaking for continuing obligation under the notification nor mandated to be so in the notification, cannot be held to have been deniable after the eligibility was determined at the threshold. Consequently, there is no breach leading to invokability of section 28 of the Customs Act, 1962 and/or section 111 of the Customs Act, 1962.

7. As far as the utilization of the imported equipment is concerned, it is not in dispute that the equipment was deployed on contracts for construction of rail over bridges. The post-importation deployment does not necessarily have to relate to contracts that confer eligibility at the threshold. Hence, execution of project contracted by Indian Railways, or any agency of the Government of Bihar, is not violative of the continuing obligation undertaken by appellants or mandated by the notification except where the project did not involve construction of roads.

8. ‘Rail over bridge’ connects two sections of a road to overcome the impediment of a railway track on the proposed route; it connects and continues the road itself save that it is not constructed on level

ground but rests on supports. The involvement of Ministry of Railways is essential as any crossing over a railway thoroughfare is statutorily under the exclusive domain of that authority and thus not incongruent with non-railway thoroughfare. That girders connect both ends and that other structures are essential to the execution does not derogate from the essential purpose of being a road connectivity. Thus the various decisions cited by Learned Authorised Representative will not apply here and, especially, that of the Hon'ble Supreme Court in *Gammon India Ltd v. Commissioner of Customs, Mumbai [2011 (269) ELT 289 (SC)]* pertaining to the coverage of the contract-awarding instrument for the eligibility at the threshold, as well others of the Tribunal, does not advance the arguments of Learned Authorised Representative. Likewise, the decision in *re Patel Engineering* does not apply as the impugned goods are entirely utilized for construction of roads. The decision in *re Sreeji Constructions,* which pertain to threshold eligibility of the awarding agency, would not apply to the present matter which seeks to deny exemption for non-compliance with the post-importation conditions.

9. In the light of our findings above, we set aside the impugned order and allow the appeal.

(Pronounced in Court)

(Dr Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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