Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10978 of 2021

(Arising out of OIO-AHM-EXCUS-000-COM-002-21-22 dated 16/08/2021 passed by Commissioner of Central Excise, Customs and Service Tax-AHMEDABAD)

LARSEN AND TOUBRO LIMITED **.....Appellant**
Heavy Engineering Division, Hazira Road, Po. Bhatha
Surat, Gujarat

VERSUS

C.C.-AHMEDABAD **.....Respondent**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:
Shri Ashish Chauhan, Advocate for the Appellant
Shri Vinod Lukose, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

Final Order No. A/ 10953 /2022

DATE OF HEARING:28.07.2022
DATE OF DECISION:10.08 .2022

RAMESH NAIR

The brief facts of the case are that the appellant have supplied interceptor Boats and spare parts thereof to the Government of India for use by the Coast Guards for the costal security, by equipping the Coast Guards with fast speed interceptor boats. While few interceptor boats had already been delivered in past and others were in manufacturing stage, the appellant under direction of Indian Coast Guard (GOI) had supplied such B&D spares, after undertaking desired inspection and testing at their premises. The appellant Vide letter dated 30.06.2017 informed the customs authorities of said supply of B&D spares and submitted the relevant documents with a request to cancel the bond as furnished in term of Notification No. 12/2012-Cus dated 17.03.2012 (Sr. No. 469A). The department vide show cause notice dated 31.08.2020, disputed the exemption of duty, as claimed by the

appellant on the import of said B&D spares. The appellant submitted the reply dated 08.10.2020 submitting that the appellant has fulfilled the conditions of notification by submitting the NDA certificate issued by the Government of India. They alternatively claimed the exemption under Serial No. 460 of the Customs Notification No. 12/2012-Cus dated 17.03.2012 (Sr. No. 460). However, the adjudicating authority confirmed the demand, imposed the penalties and redemption fine Vide Order-In-Original. Being aggrieved by the said Order-In-Original the appellant filed the present appeal.

2. Shri. Ashish Chauhan, Learned Counsel appearing on behalf of the appellant submits that the exemption under Serial No. 469A was of notification No. 12/2012-Cus was denied on the ground that the spares supplied by the appellant is not in connection with the manufacture of interceptor boats. He submits that even though the spares were separately supplied but since it was in or in relation to manufacture and accessories thereof. The said supplies clearly covered under exemption. He placed reliance on the following judgments:-

- Supreme Court Judgment in the matter of State of Haryana Vs Dalmia Dadri Cement Ltd. 1987 (Supp) SCC 679
- Supreme Court Judgment in the matter of Oblum Electrical Industries Pvt. Ltd. Hyderabad Vs Collector of Customs, Bombay (1997) 7 SCC 581
- Supreme Court Judgment in the matter of BPL Display Devices Ltd. Vs CCE Ghaziabad (2005) 10 SCC 275
- Supreme Court Judgment in the matter of Share Medical Care vs UOI-2007 (209) ELT 321 (SC)
- Decision of CESTAT, Chennai in the matter of Cipla Ltd. Vs CC, Chennai 2007 (218) ELT 547 (Tri. Chennai)

2.1 He submits that the appellant also claimed the alternative exemption under the same notification under Serial No. 460 but the adjudicating authority has denied these exemption only on the ground that interceptor boats are not warship, therefore, the exemption is not available. He submits that the appellant have been issued a certificate by the Coast Guard Government of India that the interceptor boats is indeed a warship, therefore the adjudicating authority could not have taken stand that the interceptor boat is other than warship. Accordingly, the goods of the appellant is otherwise exempted under Notification No. 12/2012-Cust dated 17.03.2012 (Sr. No. 460).

3. Shri. Vinod Lukose, Learned Superintendent (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order. He placed reliance on the following judgments:-

- 2018 (364) ELT 827 (Tri-Chennai) - Alstom Projects India Vs. CCE, Coimbatore.
- 2014 (299) ELT 263 (Guj.) - CC, Customs Vs. Posco India Delhi Steel Processing Centre P. Ltd.
- 2010 (251) ELT 433 (Tri.-Del.)- JCB India Ltd. Vs. CCE, New Delhi
- 2001 (128) ELT 155 (Tri-Chennai) - AP heavy Machinery & Engg. Ltd. Vs. CCE, Hyderabad
- Notification No. 12/2012-Cus., dated 17.03.2012.
- 2010 (256) ELT 369 (Guj.) - CCE, Surat-I Vs. Neminath Fabrics P. Ltd.
- 2008 (221) ELT 481 (SC) - Mathania Fabrics Vs. CCE, Jaipur

4. We have carefully considered the submission made by both the sides and perused the records. We find that the issue involved in the present case is that whether the appellant’s goods imported and supplied as a B&D spares of Interceptor Boats to Cost Guard, Government of India is eligible for exemption Notification No. 12/2012-Cust (Sr. No. 460 or 469A). We examine the eligibility of exemption notification under Sr. No. 460 of the notification No. 12/2012-Cus. In this regard, we find that the adjudication

authority has denied the exemption only on the ground that the interceptor boats manufactured and supplied by the appellant is not a warship. In this regard, it is necessary to go through the buyers document and we reproduced a letter issued by the Government of India, Ministry of Defence, dated 05 September, 2016 which is Scanned below:- page 34

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Email: rpt-surat@indiancoastguard.nic.in
Tel.: 0261-280-5060

GOVERNMENT OF INDIA, MINISTRY OF DEFENCE,
COAST GUARD REFIT & PRODUCTION TEAM (SURAT)
SURAT-394 510

File No.119

Dated: 05 Sep 2016

Certificate No. 119/MAT/IBs/009

To,
The Asst. Commissioner Central Excise & Service Tax
Division-II, Surat-II
2nd Floor, Samruddhi Building, Nanpura
'ear Makkai Bridge
Surat-395001

Dear Sir,

Subject: Material for Manufacturing of Intercept Boat (Warship) against our Contract No: AQ/0531/36 IBs dated 19-Mar-10 and AQ/0554/18 IBs dated 21-Jan-2013

With Reference to the above subject, we herewith certify that the Materials listed in attached "Annexure-1" are meant for exclusive use / fitment in construction of Interceptor Boats (Warship, "Classified under 89061000 of first Schedule of Central Excise Tariff Act, 1985") being built by M/s Larsen & Toubro Ltd., Hazira works, Surat for Indian Coast Guard Ministry of Defence.

(VK Parmar)
DIG
Coast Guard Refit and
Production Superintendent (Surat)
(Vinod Kumar Parmar)
Deputy Inspector general
Superintendent
Coast Guard Refit & Production Team (Surat)

From the above letter, it is clear that the interceptor boat supplied by the appellant is indeed a warship. Moreover, it is undisputed that they intercepted boats used by the Coast Guard Ministry of Defence Government of India is only for security of the costal border of the country and the boats are not used for any other purpose. It is also undisputed that the said interceptor boat are equipped with arms and ammunition, therefore, it is absolutely without any doubt that the interceptor boat is a warship. The exemption entry under the Sr. No. 460 of the notification and Condition-80 is reproduced below:-

S. No	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
460	89 or any Chapter	Spare parts and consumables for repairs of ocean going vessels registered in India.	Nil	Nil	80

Condition No.	Condition
80	If- (a) the importer maintains a proper account of import, use and consumption of the specified goods imported for the purpose of repairs of ocean going vessels and submits such account periodically to the commissioner of customs in such form and in such manner as may be specified by the said commissioner; (b) the importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself to pay on demand an amount equal to the duty leviable, -on the spares and consumables, as are not proved to the satisfaction of the said commissioner to have been used or otherwise consumed for the aforesaid purpose, within a period of three months from the date of importation thereof or within such extended period as that commissioner, on being satisfied that there is sufficient cause for not using or consuming them, as the case may be, for the aforesaid purpose within the said period, allow. Explanation.-"Ocean going vessels" includes- (i) Liners; cargo vessels of various kinds including refrigerator vessels for the transport of meat, fruit or the like, vessels specified for the transport of particular goods (grain, coal, ores or the likes); tankers (petrol, wine or the like); yachts and other sailing vessels, cable ships; ice-breakers; floating factories of all kind (for processing whales, preserving fish or the like) whale catchers; trawlers and other fishing vessels, life boats scientific research vessels; weather ships; vessels for the transportation or mooring of buoys; pilot boats; hopper barges for the disposal of dredged material or the like;

	(ii) War ships of all kinds including submarines; (iii) Tugs, dredgers, fire-floats and salvage ships; and (iv) Oil rigs, drilling ships and jack-up rigs".

From the above notification, it can be seen that the spare parts supplied for warship is clearly exempted under Notification 12/2012-Cust. Accordingly, we have no hesitation to hold that the appellant are clearly eligible for exemption Notification No. 12/2012-Cus (Sr. No. 460). In this position, we do not find it necessary to examine the eligibility of the exemption Notification No. 12/2012-Cust (Sr. No. 469A).

5. Accordingly, the impugned order is set aside, appeal is allowed.

(Pronounced in the open court on 10.08.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Prachi