CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. III

CUSTOMS APPEAL NO. 52158-52164 OF 2016

[Arising out of the Order-in-Appeal No. D-II/ICD/325-332/2016 dated 28/03/2016 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi – 110 037.]

M/s Soir International, **...Appellant**
F-2/1, 1st Floor, Sector – 16, Rohini,
New Delhi – 110 085.

Versus

Assistant Commissioner of Customs, **...Respondent**
ICD Patparganj, Near Gajipur Village,
Delhi – 110 096.

WITH
CUSTOMS APPEAL NO. 52165 OF 2016

[Arising out of the Order-in-Appeal No. D-II/ICD/325-332/2016 dated 28/03/2016 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi – 110 037.]

M/s Soir International, **...Appellant**
F-2/1, 1st Floor, Sector – 16, Rohini,
New Delhi – 110 085.

Versus

Assistant Commissioner of Customs, **...Respondent**
ICD Ballabhgarh, Sector – 59, Ballabhgarh,
Faridabad – 121 004.

APPEARANCE:
Shri Prem Ranjan, Advocate for the appellant.
Shri Rakesh Kumar, authorized representative for the Department

AND
CUSTOMS APPEAL NO. 52166 OF 2016

[Arising out of the Order-in-Appeal No. D-II/PPG/227/2016 dated 17/03/2016 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi – 110 037.]

M/s Sedna Impex India Pvt. Ltd., **...Appellant**
105, H-3, Vardhman Plaza Tower, District Centre,
Netaji Subhash Place, Pitampura,
New Delhi – 110 034.

Versus

Assistant Commissioner of Customs, **...Respondent**
ICD Ballabhgarh, Sector 59, Ballabhgarh,
Faridabad – 121 004.

AND
CUSTOMS APPEAL NO. 52758-52764 OF 2016

[Arising out of the Order-in-Appeal No. D-II/544-550/2016 dated 03/07/2016 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi – 110 037.]

M/s Sedna Impex India Pvt. Ltd., **...Appellant**
105, H-3, Vardhman Plaza Tower, District Centre,
Netaji Subhash Place, Pitampura,
Delhi – 110 034.

Versus

Commissioner of Customs, **...Respondent**
ICD Patparganj, Near Gajipur Village,
Delhi – 110 096.

APPEARANCE:
Shri Prem Ranjan, Advocate for the appellant.
Ms. Jaya Kumari, authorized representative for the Department

AND
CUSTOMS APPEAL NO. 51605 OF 2018

[Arising out of the Order-in-Appeal No. CC (A)/CUS/D-II/ICD/PPG/521/2018 dated 22/03/2016 passed by Commissioner of Customs (Appeals), New Custom House, New Delhi – 110 003.]

M/s Elvance Overseas LLP, **...Appellant**
105, H-3, Vardhman Plaza Tower, District Centre,
Netaji Subhash Place, Pitampura,
New Delhi – 110 034.

Versus

Commissioner of Customs, **...Respondent**
ICD Patparganj,
Delhi – 110 096.

APPEARANCE:
Shri Prem Ranjan, Advocate for the appellant.
Shri Rakesh Kumar, authorized representative for the Department

CORAM:
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)

FINAL ORDER NO. 50356-50372/2023

DATE OF HEARING : 17.02.2023
DATE OF DECISION: 21.03.2023

P.V. SUBBA RAO

These 17 appeals are filed assailing different orders of the Commissioner (Appeals)[1] on the same issue and hence they are being disposed of together. The appellants imported goods and self-assessed duty under section 17(1) and filed Bills of Entry which were re-assessed by the proper officers under section 17 (4) enhancing the duty. The appellants appealed to the Commissioner (Appeals) who, by the impugned orders, in each of the cases, partially allowed the appeals but denied the benefit of Central Excise Notification No. 30/2004-CE dated 9.7.2004 as amended by Notification No. 34/2015-CE dated 17.7.2015 on the additional duty of Customs. In these appeals this denial of the benefit of this notification is the only issue under challenge.

2. The details of the 17 appeals are as follows:

S.No.	Appeal	Appellant	Respondent	Impugned order
1	C/52158/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
2	C/52159/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
3	C/52160/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
4	C/52161/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
5	C/52162/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016

[1] Impugned orders

6	C/52163/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
7	C/52164/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
8	C/52165/2016	SOIR INTERNATIONAL	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/325-332 dated 23.8.2016
9	C/52166/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
10	C/52758/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
11	C/52759/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
12	C/52760/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
13	C/52761/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
14	C/52762/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
15	C/52763/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
16	C/52764/2016	Sedna Impex India Pvt. Ltd.	COMMISSIONER OF CUSTOMS, PATPAR GANJ	Order in Appeal DII/ICD/544-550 dated 3.7.2016
17	C/51605/2018	Elvance Overseas LLP	COMMISSIONER OF CUSTOMS, Tughlakabad	Order in Appeal CC(A)/CUS/D-II/ICD/PPG/521/2018 dated 22.3.2018

3. The undisputed legal position is that goods imported into India are chargeable to Customs duty under section 12 of the Customs Act, 1962 which is commonly referred to as Basic Customs Duty[2] and additional duty of customs commonly referred to (somewhat inaccurately) as countervailing duty[3] levied under Section 3 of the Customs Tariff Act, 1975. BCD is

[2] BCD
[3] CVD

chargeable as per the schedule to the Customs Tariff Act, 1975 while CVD is chargeable as per the schedule to the Central Excise Tariff Act, 1982 at the rates at which like articles manufactured or produced in India will be charged to Central Excise duties. In other words, the nature of the CVD is that of customs duty (because it is levied on goods imported into India), but the measure of CVD is that of Central Excise duty.

4. It is also undisputed that the Central Government has the power to issue exemption notifications exempting duties of customs (both BCD levied under the Customs Act and the CVD levied under the Customs Tariff Act) under Section 25 of Customs Act, 1962 and also has the power to issue exemption notifications exempting duties of Central Excise under section 5A of the Central Excise Act, 1944. Thus, CVD can be exempted by a Customs Notification and can also be exempted by a Central Excise notification because whatever is exempted as Central Excise duty automatically gets exempted as CVD. The exemption notifications can be full or partial, and could be unconditional or conditional. If the exemption notification is conditional, the conditions must be fulfilled to be entitled to the exemption notification.

5. The disputed exemption notification is 30/2004-CE dated 9.7.2004 was available subject to the condition that the goods were manufactured without availing the benefit of CENVAT credit on inputs. It read as follows:

Textiles and Textile Articles — Effective rate of duty to specified goods of Chapters 50 to 63

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 7/2003-Central Excise dated the 1st March 2003, published in the Gazette of India vide number G.S.R. 137(E), dated 1st March 2003, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the excisable goods of the description specified in column (3) of the Table below and falling within the Chapter, heading No. or sub-heading No. of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the Central Excise Tariff Act), specified in the corresponding entry in column (2) of the said Table, from whole of the duty of excise leviable thereon under the said Central Excise Act :

Provided that nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CENVAT Credit Rules, 2002, -

Table

S. No.	Chapter or heading No. or sub-heading No.	Description of goods
(1)	(2)	(3)
1.	50.04, 50.05	All goods
2.	51.05, 5106.11, 5106.12, 5106.13, 5107.11, 5107.12, 51.08, 51.09, 51.10, 51.11, 51.12	All goods
3.	52.04, 5205.11, 5205.19, 5206.11, 5206.12, 52.07, 52.08, 52.09	All goods
4.	53 (except 53.01, 53.03, 5305.31, 5305.39, 5306.90, 53.07, 5308.11 and 5308.90)	All goods
5.	54.01, 54.04, 54.05, 54.06, 54.07	All goods
6.	54.02, 54.03	Yarns procured from outside and subjected to any process other than texturising, by a manufacturer who does not have the facilities in his factory (including plant and equipment) for manufacture of yarns or textured yarn (including draw twisted and draw wound yarn) of heading 54.02 or 54.03. *Explanation,* - For the purposes of this exemption, "manufacture of yarns" means manufacture of filaments of organic polymers produced by

		processes, either: by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or (b) by chemical transformation of natural organic polymers (for example cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.
7.	5402.10, 5402.41, 5402.49, 5402.51, 5402.59, 5402.61, 5402.69	Nylon filament yarn or polypropylene multifilament yarn of 210 deniers with tolerance of 6 per cent.
8.	55.05	All goods, except such goods which arises during the course of manufacture of filament yarns, monofilaments, filament tows or staple fibres or manufacture of textured yarn (including draw twisted and draw wound yarn) of heading Nos. 54.02, 54.03, 55.01, 55.02, 55.03 or 55.04. *Explanation.* - For the purposes of this exemption, "manufacture of filament yarns, monofilaments, filament tows or staple fibres" means manufacture of filaments or staple fibres of organic polymers produced by processes, either : (a) by polymerization of organic monomers, such as polyamides, polyesters, polyurethanes, or polyvinyl derivatives; or (b) by chemical transformation of natural organic polymers (for example cellulose, casein, proteins or algae), such as viscose rayon, cellulose acetate, cupro or alginates.
9.	55.08, 55.09, 55.10, 55.11, 55.12, 55.13, 55.14	All goods
10.	55.06, 55.07	Staple fibres procured from outside and subjected to carding, combing or any other process required for spinning, by a manufacturer who does not have the facilities in his factory (including plant and equipment) for producing goods of heading Nos. 55.01, 55.02, 55.03 and 55.04.
11.	56 (except 5601.10,	All goods

	5607.10, 5608.11)	
12.	5702.19, 5703.90	All goods
13.	58 (except 5804.90, 5805.90, 58.07, 5808.10)	All goods
14.	59 (except 5907.30)	All goods
15.	60	All goods
16.	61, 62, 63 (except 6307.10)	All goods

6. Subsequently, it was amended by Notification No. 34/2015-CE dated 17.7.2015 adding one more condition that on the appropriate amount of duty should have been paid on the inputs which are used in the manufacture of the products. It read as follows:

> In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No 30/2004-Central Excise, dated the 9th July, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 421(E), dated the 9th July, 2004, namely :-
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> In the said notification, in the opening paragraph, for the proviso, the following proviso shall be substituted, namely :-
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> **"Provided that the said excisable goods are manufactured from inputs on which appropriate duty of excise leviable under the First Schedule to the Central Excise Tariff Act or additional duty of customs under section 3 of the Customs Tariff Act, 1975 (51 of 1975) has been paid and no credit of such excise duty or additional duty of customs on inputs has been taken by the manufacturer of such goods (and not the buyer of such goods), under the provisions of the CENVAT Credit Rules, 2004.".**

7. Thereafter, an explanation was inserted by notification no. 37/2015-CE dated 21.07.2015 as follows:

> In exercise of the powers conferred by sub-section (1) and sub-section (2A) of section 5A of the Central Excise Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 30/2004-Central Excise, dated the 9th

July, 2004, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 421(E), dated the 9th July, 2004, namely :-

In the said notification, in the opening paragraph, after the proviso, the following Explanation shall be inserted, namely :-

"*Explanation.* - For the purposes of this notification, appropriate duty or appropriate additional duty includes nil duty or concessional duty, whether or not read with any relevant exemption notification for the time being in force.".

8. As far as the goods manufactured in India are concerned, the legal position is clear that prior to the amendment dated 17.7.2015, the exemption was available if no CENVAT credit was availed and after this date, duty should also have been paid (and such duty could be nil rate of duty) on the inputs and no CENVAT credit should have been availed.

9. The question which arises is will the benefit of this notification be available for the CVD on imported goods. With respect to the notification as it was before 17.7.2015, the requirement was only that no CENVAT credit should have been availed on the inputs used in the manufacture of the goods. In case of goods which are imported, since they are manufactured outside India it is not possible for the manufacturer to avail CENVAT credit at all. It has been decided by the Supreme Court in **SRF Ltd. vs Commissioner of Customs, Chennai**[4] that the benefit would be available. Relevant portions of this judgment are reproduced below:

4. As per the aforesaid entry, the rate of duty is nil. Condition No. 20 of this Notification, which was relied upon by the authorities below in denying the exemption from payment of CVD, is to the following effect :

[4] 2015(318)ELT 607

If no credit under Rule 3 or Rule 11 of the Cenvat Credit

"20. Rules, 2002, has been taken in respect of the inputs or capital goods used in the manufacture of these goods."

5. The aforesaid condition is to the effect that the importer should not have availed credit under Rule 3 or Rule 11 of the Cenvat Credit Rules, 2002, in respect of the capital goods used for the manufacture of these goods.

6. In the present case, admitted position is that no such Cenvat credit is availed by the appellant. However, the reason for denying the benefit of the aforesaid Notification is that in the case of the appellant, no such credit is admissible under the Cenvat Rules. On this basis, the CEGAT has come to the conclusion that when the credit under the Cenvat Rules is not admissible to the appellant, question of fulfilling the aforesaid condition does not arise. In holding so, it followed the judgment of the Bombay High Court in the case of '*Ashok Traders* v. *Union of India*' [1987 (32) E.L.T. 262], wherein the Bombay High Court had held that "it is impossible to imagine a case where in respect of raw nephtha used in HDPE in the foreign country, Central Excise duty leviable under the Indian Law can be levied or paid." **Thus, the CEGAT found that only those conditions could be satisfied which were possible of satisfaction and the condition which was not possible of satisfaction had to be treated as not satisfied.**

7. We are of the opinion that the aforesaid reasoning is no longer good law after the judgment of this Court in *'Thermax Private Limited* v. *Collector of Customs (Bombay), New Customs House'* [1992 (4) SCC 440 = 1992 (61) E.L.T. 352 (S.C.)] which was affirmed by the Constitution Bench in the case of *'Hyderabad Industries Limited* v. *Union of India'* [1999 (5) SCC 15 = 1999 (108) E.L.T. 321 (S.C.)]. In a recent judgment pronounced by this very Bench in the case of *'AIDEK Tourism Services Private Limited* v. *Commissioner of Customs, New Delhi'* [Civil Appeal No. 2616 of 2001 - 2015 (318) E.L.T. 3 (S.C.)], the principle which was laid down in *Thermax Private Limited* and *Hyderabad Industries Limited* was summarised in the following manner :-

> "15. The ratio of the aforesaid judgment in *Thermax Private Limited* (supra) was relied upon by this Court in *Hyderabad Industries Ltd.* (supra) while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein. In that case, the Court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the Customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the Excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the explanation deals with the situation where 'a like article is not so produced or manufactured'. The use of the word 'so' implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the

> explanation if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. *For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of Excise duty was leviable thereon."*
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> (Emphasis supplied)
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> **8. We are of the opinion that on the facts of these cases, these appeals are squarely covered by the aforesaid judgments. We accordingly hold that appellants were entitled to exemption from payment of CVD in terms of Notification No. 6/2002. The appeals are allowed and the demand of CVD raised by the respondents-authorities is set aside.**

10. After 17.7.2015 amendment, to avail the benefit of exemption notification, one more condition has to be fulfilled which is that the Central Excise duty should have been paid on the inputs used and no CENVAT credit should have been taken. Just as it is impossible for a manufacturer located outside India to avail CENVAT credit, it is equally impossible to pay central excise duty on the inputs which have gone into such manufacture (except in an unlikely situation where all the inputs were manufactured in India, duty has been paid and no rebate was claimed and they were exported and using these inputs the goods are manufactured which are then imported into India).

11. The case of the appellants is that they are entitled to the benefit of the exemption notification even after the amendment on 17.7.2015 and it is the case of the Revenue that the appellants are not entitled to this benefit after the amendment.

12. Learned counsel for the appellants made the following submissions.

(a) As far as the period prior to 17.7.2015 is concerned, it has been held by the Supreme Court in **SRF Ltd.** that the benefit of the exemption notification 30/2004-CE will be available for the CVD payable on imported goods.

(b) After the amendment on 17.7.2015, the additional condition was that appropriate amount of Central Excise duty should have been paid on inputs. The explanation inserted on 21.07.2015 further clarifies that the rate of duty could be NIL.

(c) Thus, as far as imported goods are concerned, since the inputs were manufactured outside India, no central excise duty was payable and it was not paid. Even payment of duty at NIL rate also satisfies this condition and therefore, the benefit of the exemption even after amendment, is available on CVD on imported goods.

(d) They rely on the following orders of the Tribunal to assert that the benefit of the exemption notification is available to imported goods even if no central excise duty is payable on the inputs used in the manufacture of the goods.

(i) **Commissioner of Customs (Port) vs M/s. Enterprise International Ltd.** decided by F. No. 76658-76659/2018 dated 20.9.2018

(ii) **Commissioner of Customs vs M/s. Enterprise International decided by F.No dated 17.1.2019**

(iii) **M/s. Artex Textiles Pvt. Ltd. vs Commissioner of Customs, ICD, Patparganj** decided by F.NO. dated 24.7.2019

(iv) **Sedna Impex India Pvt. Ltd. vs CC Mundra** decided by the Ahmedabad bench of this Tribunal by Final Order No. A/10106-10190/2022 dated **18.2.2022**

(e) Therefore, all these appeals may be allowed and the impugned orders need to be modified to the extent of allowing the benefit of Notification No. 30/2004-CE dated 9.7.2004 as amended by Notification No. 34/2015-CE dated 17.7.2015 on the CVD on imported goods.

13. Learned departmental representative for the Revenue made the following submissions.

(a) The judgment of the Supreme Court in **SRF Ltd.** pertained to the period before 17.7.2015 when there was only one condition that no CENVAT credit should have been availed in the manufacture of the goods.

(b) After 17.7.2015, an additional condition was inserted that the goods should have been manufactured out of inputs on which appropriate central excise duty has been paid.

(c) The appellant does not even claim that the imported goods were manufactured out of duty paid inputs. The appellant's claim is that since the goods were imported, the benefit of this exemption notification must be available without fulfilling this condition.

(d) Exemption notifications must be strictly interpreted against the claimant and any benefit of doubt must go in favour of the Revenue as held by the Constitutional bench of the Supreme Court in **Commissioner of Customs (Imports) vs Dilip Kumar[5].**

(e) The purpose of levying CVD is to provide a level playing field to the domestic manufacturers and for this reason, the CVD is levied at the rates applicable to like goods if manufactured in India. Any exemption notifications available to the goods manufactured in India will, likewise, be available to the imported goods. If there are any conditions attached to any notification, they will also apply to the imported goods as they apply to the goods manufactured in India.

(f) The imported goods cannot be put on a better footing than the goods manufactured in India.

(g) He placed reliance on the judgments of the Madras High Court in **Commissioner of Customs (Exports) Chennai vs Prashray overseas Pvt. Ltd.[6]** and **M/s. HLG Trading vs UOI[7]** which dealt with the availability of the exemption notification after 17.7.2015 for the CVD on imported goods which squarely cover the issue in favour of the Revenue.

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[5] 2018 (361) E.L.T. 577 (S.C.)
[6] 2016(338) ELT 44 (Mad.)
[7] 2016 (331) E.L.T. 561 (Mad.)

(h) Since this is the order of the High Court, it prevails over the contrary decision of this Tribunal.

14. We have considered the submissions on both sides and perused the records. The short question to be decided is whether or not the appellants would be entitled to the benefit of the exemption notification 30/2004-CE dated 9.7.2004 as amended by Notification No. 34/2015-CE dated 17.7.2015 read with the explanation dated 21.7.2015.

15. Before 17.7.2015, the only condition in the exemption notification was that no CENVAT credit should have been availed on the inputs used in manufacture of the goods. It is obvious that the CENVAT credit will not be available at all if the goods are manufactured outside India and therefore, it is impossible to have availed CENVAT credit on the goods manufactured outside India. Therefore, it is fair to assume that no CENVAT credit was availed on the inputs used in the manufactured of imported goods. Therefore, the condition that no CENVAT credit should have been availed is fulfilled with respect to imported goods.

16. After 17.5.2015, a second condition has been added that Central Excise duty should have been paid on the inputs. Just as it is impossible for the manufacturer outside India to have availed CENVAT credit, it is equally impossible for Central Excise duty to have been paid on the inputs used in the manufacture of the goods. Therefore, it is reasonable to assume that this condition

was not fulfilled with respect to imported goods just as it is reasonable to assume that no CENVAT credit has been availed.

17. The appellants also do not claim at all that the central excise duty has been paid on the inputs used. It is their claim that since it is not possible for this condition to be fulfilled with respect to imported goods, the condition itself should not apply to imported goods. In other words, what the appellants are claiming is that although the exemption now has two conditions of which one is not fulfilled in respect of imported goods, the benefit should be available without fulfilling this condition.

18. It is the appellant's contention that since Central Excise Act extends to the whole of India and not beyond, no central excise duty is payable on the inputs which are manufactured outside India. Further, after the insertion of the explanation in the notification, it is clear that even NIL rate of duty should be considered as payment of duty. Therefore, with respect to the inputs used in the manufacture of the imported goods, this condition cannot apply. They rely on the order of a bench of this Tribunal in **Sedna Impex vs CC Mundra decided on 18.02.2022.**

19. We find that if the exemption notification is read as per the appellant's submissions, it will put the domestic industry at a disadvantage and unduly favour the imported goods. To claim the benefit of the same exemption notification, the domestic industry will have to manufacture it out of duty paid inputs while the

imported goods will get this benefit without paying duty on the inputs. Any exemption notification must be strictly interpreted as it is drafted and there cannot be any intendment while interpreting it. The person claiming the benefit of the notification will have to fulfill all the conditions in the notification. If the conditions are not fulfilled, the benefit is not available. Evidently, the condition of the goods being manufactured out of duty paid inputs is impossible or at least extremely unlikely to be fulfilled in imported goods. It is not even disputed that this condition was not fulfilled. The submission is that this condition should not apply to imported goods. We cannot agree with this submission. The notification does not draw a distinction or make an exception to imported goods.

20. Although notifications must be literally interpreted, even if the notification is viewed from the point of view of equity, it is an established and accepted practice in international trade that exports are zero rated, i.e., if any taxes are paid on final products which are exported or on the inputs used for their manufacture, they are reimbursed to the exporter in some form or the other by the government of the exporting country. Thus, it is not unreasonable to assume that any inputs which have gone into the manufacture of the imported goods have not suffered any taxes in the exporting country. Goods manufactured in India, on the other hand, to avail the benefit of this notification have to be manufactured out of duty paid inputs. Thus, if the benefit of this exemption notification is extended to imported goods, the

domestic industry will be at a distinct disadvantage. So, even from the point of view, there cannot be two rules for the domestic industry and imported goods by requiring the domestic industry to fulfill the condition and not insisting the imported goods to fulfill the same conditions.

21. Another internationally accepted principle of trade is 'National Treatment' which subjects the imported goods to the same restrictions as are applicable to domestically manufactured goods. If the appellant's submissions are accepted, it will result in preferential treatment to imported goods which is not warranted.

22. When something is impossible to do, in the absence of any evidence to the contrary, it would be reasonable to assume that it has not been done. The notification has two conditions- one a negative stipulation and the other a positive one. The negative stipulation is that no CENVAT credit shall be taken. In case of imported goods, it is impossible for the manufacturer abroad to have CENVAT credit and therefore, it is reasonable to assume that no CENVAT credit is taken and this negative stipulation is fulfilled.

23. The second condition is a positive stipulation that Central Excise duty has been paid on the inputs used in the manufacture of the goods. In case of imported goods, it is impossible for the central excise duty to have been paid on the inputs which were used in the manufacture of the goods and it is reasonable to assume that no Central Excise duty has been paid and this

positive stipulation is not fulfilled. There is also no assertion that the Central Excise duty has been paid. Thus, this condition of the exemption notification has not been fulfilled.

24. The appellants' submission is that since the explanation says that payment includes payment at NIL rate of duty and since the inputs used in manufacture of the imported goods are not chargeable to central excise duty (being manufactured out of the jurisdiction of the Central Excise Act), such non-payment of duty should be considered as payment of duty at NIL rate. In our considered view, this explanation has been misconstrued to mean that although duty has to be paid on the inputs to avail the benefit of the exemption notification, it is okay even if it is not paid. If the explanation is interpreted so, the condition itself become otiose. The condition envisages circumstances in which duty is paid on the inputs and circumstances in which the duty is not paid on the inputs and it clearly excludes the latter from the scope of the exemption. However, it may happen that duty is paid on the inputs and on some or all the inputs the rate of duty itself is NIL. In such a case, if duty is not paid on such inputs because the rate of duty is NIL, it does not result in deprivation of the benefit of the exemption notification which is the correct interpretation of the explanation.

25. In the case of **SRF Ltd.,** as is evident from the extracts reproduced above, the notification had only one condition that no CENVAT credit should have been availed. It was not in dispute

that no CENVAT credit was availed in that case but the Tribunal denied the benefit of the exemption notification because the CENVAT credit could not have been availed. The tribunal held that only those conditions could be satisfied which were possible of satisfaction and **the condition which was not possible of satisfaction had to be treated as not satisfied**. This decision was overturned by the Supreme Court. Thus, when it is evident that the condition of not availing the benefit of CENVAT credit has been fulfilled, you cannot treat it as not satisfied. If it is evident that the condition is satisfied, it has to be taken as satisfied and vice versa.

26. The second condition introduced after the amendment was that the excise duty should have been paid on the inputs used in the manufacture of the goods. This condition was evidently not satisfied in these appeals because if the goods are manufactured outside India with inputs manufactured outside India, excise duty could not have been paid. **Thus, after the amendment, there will be no change in the negative stipulation in the notification that no CENVAT credit should have been availed. Since it is impossible to avail CENVAT, it is nobody's case that CENVAT has been availed. Thus, the requirement that NO CENVAT should be availed has been fulfilled. The positive stipulation in the notification that excise duty should have been paid on the inputs is also impossible. It is also undisputed that no excise duty has**

been paid on the inputs. Thus, the second condition has not been fulfilled in these cases.

27. Therefore, in our considered view, the benefit of the exemption notification 30/2004-CE dated 9.7.2004 as amended by Notification No. 34/2015-CE dated 17.7.2015 will not be available to the goods which are imported. We have considered the contrary views taken by coordinate benches of this Tribunal in **Enterprise International Ltd., Artex Textiles Pvt. Ltd and Sedna Impex India.** However, we find the Hon'ble High Court of Madras in **HLG Trading** and in **Prashray Overseas** held that the benefit of the exemption notification will not be available to the imported goods. After a detailed examination of the issue, in **Prashray Overseas**, the Madras High Court held as follows:

> **60.** Hence, in fine, the propositions of law that would emerge out of the above discussion, can be summed up as follows :
>
> (i) **In cases where the exemption Notifications are absolute and they do not make the benefit available only upon the fulfillment of any condition, even the importer would be entitled to the benefit of exemption**.
>
> (ii) **In cases where the Notifications for exemption stipulate only one condition namely that the inputs used in the manufacture of the exempted goods should have suffered a duty, then the benefit of the Notification will not be available to any of the importers, since he could have never paid any duty of excise on the inputs used in their manufacture by the foreign manufacturer. This proposition is based upon the premise that the object of such Notifications is only to grant exemption to those final products, on which, some duty has been paid (in India) at the stage of inputs. In other words, Notifications of this nature, are not merely conditional, but also restrictive in nature, as they confer benefit not upon all manufacturers of exempted goods, even if they are domestic manufacturers, but only upon those, who use inputs that had suffered duty.**
>
> **(iii) In cases where the exemption Notification stipulates only one condition namely that no Cenvat credit ought to have been availed on the inputs, the benefit of the Notification will be available only to those, who satisfy two conditions namely that the inputs used by them suffered a duty and that they did not seek Cenvat credit. Since an importer can never satisfy the first**

condition, the second condition becomes inapplicable to him and he cannot be heard to contend that the inapplicability of the condition by itself would make him eligible for the grant of the benefit.

(iv) In cases where the exemption Notification stipulates two conditions, namely that the inputs should have suffered duty and that no Cenvat credit should have been availed, then the benefit of the Notification will be available only if both conditions are satisfied. An importer will never be able to satisfy both these conditions and hence, he cannot claim the benefit.

61. Therefore, we answer both questions of law against the assessee. As a consequence, the appeals of the Revenue are allowed. No costs.

28. An appeal against the judgment was filed before Supreme Court[8] but it has not been stayed. Therefore, the judgment of the Madras High Court is still holds the field.

29. We find that a coordinate bench of this Tribunal in the two Orders in the case of **Enterprise International Ltd.,** in the case of **Artex Textiles Pvt. Ltd.** ruled in favour of the assessee and against the Revenue. However, we do not find any discussion as to why the judgment of the Madras High Court in **Prashray Overseas** did not apply to those cases. Another coordinate bench of this Tribunal in **Sedna Impex India vs CC Mundra** relied on the **Enterprise International Ltd.** and held as follows:

> The above decision has been delivered considering the Hon'ble Supreme Court judgment in the case of SRF LTD. VS. COMMISSIONER OF CUSTOMS, CHENNAI-2015 (318) ELT 607 (S.C.) and AIDEK TOURISM SERVICE PVT. LTD Vs. COMMISSIONER OF CUSTOMS- 2015 (318) ELT 3 (S.C.), therefore, the sole reliance of the Revenue in the case of PRASHRAY OVERSEAS PVT LTD (Supra) is of no help to revenue.

[8] 2017 (355) E.L.T. A151 (S.C.)

30. In the facts of these cases, the matters pertained to the period after the amendment 34/2015-CE dated 17.7.2015 adding the new condition that central excise duty should have been paid on the inputs was introduced and further after the explanation was inserted by 37/2015-CE dated 21.07.2015. The undisputed position is that there are two conditions (1) no CENVAT credit should have been availed which is fulfilled and (2) that excise duty should have been paid on the inputs which has not been fulfilled.

31. Respectfully following the judgment of the Madras High Court, we hold that the appellants were not entitled to the benefit of 30/2004-CE dated 9.7.2004 as amended by Notification No. 34/2015-CE dated 17.7.2015 for the CVD on the imported goods.

32. We, therefore, find that there is no infirmity in the impugned orders. The impugned orders are upheld and all the appeals are dismissed.

(Order pronounced in open court on 21/03/2023.)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

(BINU TAMTA)
MEMBER (JUDICIAL)

PK