
(2023) 07 CESTAT CK 0030

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No.110 Of 2010

Centre For Marine Living Resources & Ecology

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 20-07-2023

Acts Referred:

Customs Act, 1962 — Section 2(21)(ii), 2(38), 12, 25, 114A

Citation : (2023) 07 CESTAT CK 0030

Hon'ble Judges : P. A. Augustian, Member (J),;R. Bhagya Devi, Member (T)

Bench : Division Bench

Advocate : Hari Kumar G. Nair, K. Vishwanath

Final Decision : Allowed

Judgement

R. Bhagya Devi, Member (T)

1. The Centre for Marine Living Resources and Ecology (CMLRE), the appellant herein, is an organisation established by Government of India under Ministry of Earth Sciences for organising, coordinating and promoting development activities. Appellant was issued with the show-cause notice dated 14.01.2009 demanding customs duty amounting to Rs.91,05,880/-. The Master of the vessel Fishery Oceanographic Research Vessel (FORV) Sagar Sampada owned by the appellant had imported ship spares in large quantity onboard the vessel after filing reshipment application instead of Bill of Entry and without paying any customs duty, hence, the show-cause notice.

2. It was noticed that during 18.1.2008 to 29.12.2008, 56 reshipment applications were filed on behalf of FORV Sagar Sampada and ship spares valued at Rs.2,87,22,089/- were cleared to onboard the vessel without payment of any customs duty. The Commissioner of Customs held that Section 12 of the Customs Act, 1962 renders all imported goods liable for payment of duty and the power to grant exemption from payment of duty was vested with Central Government under Section 25 of the Customs Act, 1962. In the instant case, the CBEC vide

letter D.O.F No.445/3/98-Cus. IV dated 30.05.1988 stated that the Government had agreed to consider the vessel as a 'foreign going vessel' within the meaning of Section 2(21)(ii) of the Customs Act, 1962, for purpose of permitting duty-free supply of diesel oil and lubricating oil, subject to the condition that other items of store in the nature of liquor, cigarettes and food stuffs will not be permitted free of duty. The Commissioner taking into account the definition of 'Stores' as defined under Section 2(38) of the Customs Act, 1962 held that goods for use in a vessel includes fuel and spare parts and other articles of equipment. The vessel had been granted foreign going status only for the duty-free supply of fuel and lubricants, therefore, the goods other than fuel and lubricants attract duties of customs. Accordingly, duty on the spares was demanded and duty amount of Rs.91,05,880/- was confirmed along with interest and penalty imposed under Section 114A of the Customs Act, 1962 on the Master of the vessel.

3. Learned counsel appearing on behalf of the appellant referring to the impugned order stated that it is an admitted fact that FORV Sagar Sampada was a research vessel owned by Ministry of Earth Science and he also stated that the letter issued by CBEC declared them as a foreign going vessel and permitted duty-free supply of diesel oil and lubricating oil subject to the condition that other items of stores in the nature of liquor, cigarettes and food stuffs will not be permitted free of duty. In the permission given by CBEC, nowhere the words 'spares' has been categorically mentioned, hence, it was not for the Commissioner to interpret 'Stores' as per Section 2(38) to include the item 'spares' which had been permitted by CBEC.

3.1 The alternative argument taken by the learned counsel for the appellant is that even if the above benefit for the foreign going vessel was to be rejected, they were eligible for the exemption vide Notification No.21/2002 which is meant for Ocean Going Vessels.

Sl.No.

Chapter

Heading or subheading

Description of goods

Standard rate

Addl.

Duty rate

Condition No.

(1)

(2)

(3)

(4)

(5)

(6)

351

89 or any Chapter

Capital goods and spares thereof, raw materials, parts, material handling equipment and consumables, for repairs of ocean- going vessels by a ship repair unit registered with the Director General of Shipping,

Government of India

Nil

Nil

71

Hence, either way whether the foreign going vessel or ocean going vessel, the benefit of the exemption Notification for spares had to be extended, therefore, the demand needs to be set aside and accordingly, the penalty on the owner of the vessel also.

4. On the other hand, the learned Authorised Representative argued that the Commissioner was right in denying the benefit of the exemption Notification as per CBEC vide letter D.O.F No.445/3/98-Cus. IV dated 30.05.1988. They also argued that the Notification No.21/2002-Cus. (sl.no.351) was eligible only for the Cochin Shipyard and not for the appellant. They also produced Notification No.21/2011 which includes 351A which clearly shows that the benefit was eligible to the appellant only from 1.3.2011.

Sl.

No.

Chapter

Heading or subheading

Description of goods

Standard rate

Addl.

Duty rate

Condition No.

(1)

(2)

(3)

(4)

(5)

(6)

351A

89 or any Chapter

Spare parts and consumables for repairs of ocean going vessels

registered in India

Nil

Nil

111

5. Heard both sides.

6. It is an admitted fact that FORV Sagar Sampada is a Scientific Research Vessel and the CBEC vide letter D.O.F No.445/3/98-Cus. IV dated 30.05.1988 considered the vessel as foreign going vessel, which reads as below:

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

DEPARTMENT OF REVENUE

CENTRAL BOARD OF EXCISE AND CUSTOMS

D.O.F. NO. 445/3/88-CUS.IV

New Delhi, the 30th May, 1988

"Please refer to correspondence resting with your D.O. letter No. DOD/ FORV/8/84(P) dated the 26th May, 1988 regarding request vessels 'Sagar Sampada' and 'Sagar Kanya'.

2. Having regard to the fact that both 'Sagar Kanya' and 'Sagar Sampada' are solely engaged in research work and in survey of living resources in the high seas outside the territorial waters of India, government have agreed to consider both these vessels as 'foreign going vessels' within the meaning of Section 2(21) (ii) of the Customs Act, 1962, for purposes of permitting duty free supply of diesel oil and lubricating oil, subject to the condition that other items of stores in the nature of liquor, cigarettes and food stuffs will not be permitted free of duty. You are requested to communicate the concurrence of the Department of Ocean Development to the above immediately.

3. A copy of this letter is being endorsed to collector of Customs, Cochin and the Additional Collector of Customs, Goa, for further necessary action. You are requested to approach them for further action in the matter.”

Based on the above CBEC letter, appellant was deemed as a foreign going vessel and allowed them the benefit of duty-free supply of diesel oil and lubricating oil subject to the condition that other items of stores in the nature of liquor, cigarettes and food stuffs will not be permitted free of duty and nowhere word ‘spares’ is appearing in this letter and hence, it appears that the appellant is right in claiming the benefit of exemption for spares also.

6.1 The alternative argument claim of the appellant is that they are eligible for the benefit of Notification No.21/2002 under SL. No.351 which is meant for Ocean Going Vessel needs to be examined. The notification mentioned supra vide its explanation provides the following definition for Ocean-Going Vessel which is reproduced below:

Explanation – “Ocean Going Vessels” includes:-

(a) Liners; cargo-vessel 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 like); tankers (petrol, wine or the like); yachts and other sailing vessels; cable ships; ice-breakers; floating factories of all kinds (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; hooper barges for the disposal of dredged material or the like; emphasis supplied As seen above from the definition the Ocean Going Vessels includes scientific research vessel. And it is an admitted fact that FORV Sagar Sampada is a Scientific Research Vessel and hence, the question of not treating the appellant as an Ocean-Going Vessel does not arise. It is an Ocean-Going Vessel registered with the Director General of Shipping. Since, the Notification allows spares for repairs of ocean-going vessels by a ship repair unit registered with the Director General of Shipping, Government of India, and the question of denying this benefit does not arise. It is also seen from the records that F. No. 354/39/2010-TRU dated 10.05.2010, the letter categorically mentions that vessel Sagar Sampada is an Ocean-Going Vessel which is eligible for import duty exemption in respect of spares, parts and other specific items for repair of the vessel under Notification No.21/2002-Cus. dated 1.3.2002.

7. In view of the above discussions, the impugned order is set aside and the appeal is allowed.