

(2010) 01 MAD CK 0059

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 3484 of 2009

Commissioner of Customs No. 1

APPELLANT

Vs

Frontier Aban Drilling (India) Ltd.

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Customs Act, 1962 — Section 111O, 112

Citation : (2010) 254 ELT 63

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : P. Bhuvaneswari, J, for the Appellant;

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This appeal has been filed against the order of the Customs, Excise and Service Tax Appellate Tribunal in Final

Order No. 717 of 2007 in C/Appeal No. 42 of 2006 dated 6.6.2007 whereby the Tribunal confirmed the order of the Commissioner of Customs

dated 13.4.2005 whereby the proposal of the Deputy Commissioner of Customs, Cuddalore, by issuance of a notice as to why the importer

should not be held liable u/s 111(o) of the Customs Act (hereinafter referred to as the Act) and penalty u/s 112(a) of the Act has been set aside.

2. The minimum facts required for the purpose of disposal of this appeal are as follows:

The importer the respondent herein, which is a sub-contractor of M/s. Hardy Exploration and Production (India) Inc., imported through the port of

Cuddalore a drill ship by filing a bill of entry No. 8/2002-03 dated 29.6.2002, which drill ship was valued at Rs. 148.92 crores meant for oil well

drilling operations at PY 3 Oil Field area falling under customs tariff CH No.

8905.90 by availing exemption contained under the Notification No.

21/2002 dated 1.3.2002. Condition No. 31 inter alia stated that if the goods are imported by an Indian Company or Companies, a foreign

company or foreign companies in connection with petroleum operations to be undertaken under a contract with the Government of India and

where the importer is a contractor and certified from the duly authorized officer of the Directorate General of Hydro Carbons in the Ministry of

Petroleum and Natural Gas, Government of India to the effect that the imported goods are required for petroleum operations and the importer

produced to the Deputy/Assistant Commissioner of Customs at the time of importation a certificate from the duly authorized officer of the

Directorate General of Hydro Carbons, Government of India to the effect that the imported goods are required for petroleum operations referred

to in Clause (a) and have been imported under the contract referred to in that Clause and containing the name of such sub-contractor, an affidavit

to the effect that such sub-contractor is a bona fide sub-contractor of the contractor and an undertaking from such contractor binding him to pay

any duty, fine or penalty that may become payable, if any of the conditions of this notification are not complied with by such sub-contractor. After

performing the contract work of drilling, the importer re-exported the ship. However, a part of the drill ship, which would be used for the purpose

of drilling namely blow out preventer and its accessories during the operation sheared off and immersed in the sea, which is admittedly irretrievable.

Because of the non exportation of the particular part, the show cause notice was issued. The Commissioner of Customs as well as the Tribunal

held that the non exportation of that particular part would not per se amount to violation of exemption condition and set aside the show cause

notice issued for recovery of the amount in a sum of Rs. 5,75,84,140/-.

3. Before us, it is contended that the ship and the accessories contained therein had to be insured by the importer so as to have the benefit of the

Notification, which it failed to do.

4. We have carefully considered the arguments of the learned Counsel for the appellant and perused the materials available on record as well as

the orders of the lower Authorities. No such condition has been imposed or stated to be imposed in the Notification. It is the admitted case of the

Department that the blow out preventer and its accessories were immersed in the deep water of the sea and became irretrievable. Hence, the importer cannot be directed to perform the function, which is impossible of performance. It is a different matter if it is the case of the Department that the importer retrieved the sheared off part of the drill ship and diverted it for some other purpose. On the contrary, it is the admitted case of the Department that the blow out preventer has been sheared off and immersed in the deep water of the sea, which is irretrievable. That was the reason given by the Tribunal for confirming the order of the Commissioner of Customs, who set aside the proposal of the Department to recover a sum of Rs. 5,75,84,140/- and for imposition of penalty. We do not find any merit in this case so as to entertain the appeal in the above stated facts and circumstances of the case.

5. The civil miscellaneous appeal is dismissed.