ALO Law Office- IDT Tax I Arbitration I Litigation

Date: 30.06.2025

CESTAT Kolkata Ruling in Favour of Global Entrade on Project Import Dispute

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata has quashed a ₹12.95 lakh customs duty demand raised against M/s Global Entrade, an importer based in Assam, under the Project Import Regulations, 1986 (PIR 1986). The Tribunal held that the Show Cause Notice (SCN) issued by the customs department was time-barred, having been served nearly six years after the relevant import transaction.

Case Background

M/s Global Entrade had registered a contract with the customs authorities for importing machinery to establish a cold storage facility in Guwahati. The contract was registered under Project Import Registration No. S37(P)PROJ-08/2014 A(6), and was backed by Essentiality Certificates from the Ministry of Food Processing Industries, qualifying the import for concessional duty under Notification No. 12/2012-Customs, Entry Sl. No. 515.

The machinery was imported via Bill of Entry No. 7356551 dated 12.11.2014, and provisional assessment was completed with applicable 5% Basic Customs Duty and NIL CVD, as per the project import benefit.

What Triggered the Dispute?

In 2016, the Customs Revenue Audit Directorate (CRAD) raised an objection that the goods should have been classified under Serial No. 510 of the notification—attracting a 12.5% CVD—rather than Sl. No. 515. Based on this, a Show Cause Notice dated 30.09.2020 was issued to the importer demanding:

- ₹12,95,061 in differential customs duty

- Enforcement of the Provisional Assessment bond
- Encashment of bank guarantee worth ₹2,00,000
- Interest under Section 18(3)
- Penalty under Section 117 (though later dropped)

Tribunal's Observations & Legal Reasoning

1. SCN Issued Beyond Reasonable Period

Though Section 18(2) of the Customs Act does not prescribe a time limit for finalization of provisional assessments, the Tribunal relied on the Supreme Court's ruling in Bhatinda District Co-op Milk Producers Union Ltd. [2007 (217) ELT 325 (SC)], holding that a "reasonable period" applies, which is generally five years. The SCN was issued nearly 6 years after assessment, rendering it time-barred.

2. Full Compliance with Project Import Procedures

The importer had:

- Registered the project with proper documentation
- Submitted the essentiality certificate
- Responded to audit queries
- Cooperated with all proceedings

Thus, the delay was on the part of the department, not the importer.

3. Submission of Summary Report Not Mandatory

The Tribunal relied on precedents like Creative Industries Pvt. Ltd. [2012 (282) ELT 349 (AP)] to hold that Regulation 7 of PIR 1986 (requiring summary statement within 3 months) is not mandatory for final assessment, especially when the project and benefit have already been validated.

Legal Takeaway

This case affirms the judicially recognized principle that the revenue authorities must act within a reasonable timeframe. When importers comply with their part of obligations, undue delays by the department cannot result in retrospective duty burdens.

Final Outcome

"I allow this appeal and set aside the impugned order. The Appellant shall be entitled to consequential benefits in accordance with law." CESTAT Kolkata, Final Order No. 75901/2023 dated 27.06.2023

Why This Matters

- Strengthens importer confidence in long-term projects under Project Import Scheme
- Encourages timely assessments by customs authorities
- Limits arbitrary invocation of audit objections beyond 5 years

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Kolkata

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IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Customs Appeal No. 75158 of 2023

(Arising out of Order-in-Appeal No. KOL/CUS(PORT)/KS/41/2023 dated 16.01.2023 passed by Commissioner of Customs (Appeals), Kolkata)

M/s. Global Entrade
(Gaurav Bhawan, 2nd Floor, D Neog Path,
Ananda Nagar, G S Road, Guwahati, Assam)

Appellant

VERSUS

Commissioner of Customs (Port), Kolkata
(15/1, Strand Road, New Custom House, 700001)

Respondent

APPEARANCE :

Mr K. K. Sanyal, Consultant for the Appellant
Mr. Manish Mohan, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHURY, MEMBER (JUDICIAL)

FINAL ORDER NO.75901/2023

Date of Hearing : 07 June 2023
Date of Decision : 27.06.2023

PER ANIL CHOUDHURY

The issue in this appeal is whether the Appellant has been rightly imposed demand of duty Rs.70,90,200/- under Section 18 of the Customs Act with further demand for payment of differential duty Rs.12,95,061/- with interest. For the enforcement of Provisional Assessment (P.A.) Bond, having value Rs.97,44,000/- was ordered with further direction to invoke the bank guarantee for Rs.2,00,000/-.

2. Briefly stated, the facts for the purposes of the present appeal are that the appellant submitted an application for registration of contract in the form of two nos. Purchase Orders for setting up a new unit for cold storage facilities claiming benefits of Project Import Regulation 1986 (PIR 1986) against which two separate Essentiality Certificates were issued in favour of the appellant by the Union Ministry of Food Processing Industries (sponsoring authority) in order to avail benefit

under (PIR 1986) subject to fulfill conditions of Notification dated 01.03.2022 as applicable.

3. The aforesaid 2 Purchase orders were registered under Project Import Registration No. S37 (P) Proj-08/2014 A(6) DTD 07.08.2014 under PIR 1986. Consequently, 2 Bills of Entry were filed. However the present Appeal is limited to only one Bill of Entry, viz B/E No.7356551 dtd 12.11.2014 for which the appellant has claimed concessional rate of Customs duty under the provisions of SI No. 515 of Notification No.12/2012-Cus dated 17.03.2012.

4. All formalities/documentation pertaining to the said imported goods were completed through various letters sent by appellant to the Department in response to the Department's communications. However pursuant to issuances of above mentioned two queries by CRAD for "Short levy of duty due to incorrect application of exemption notification", against the appellant for the subject importation vide B/E No. 7356551 dtd 12.11.2014, letter was issued by the Deptt. Dated 08.08.2016 wherein it was mentioned that the goods were assessed extending benefit of Sr No. 515 of Exemption Notification 12/2015-Cus dated 17.03.2012 with Customs duty @ 5% BCD and Nil CVD. However, since goods were meant for setting up Cold Storage, they should have been classifiable under Sr No. 510 of Notification 12/2012-Cus dated 17.03.2012 @ 5% BCD and 12.5% CVD. On this basis, demand notice was issued to the appellant in respect of short levied amount of Rs.12,95,060.55/-. However, the appellant had disagreed with the calculations and had submitted that dispute stood limited to Rs.9,31,918/-. Further the appellant fulfilled the conditions for exemption from CVD.

5. That after substantial lapse of time, the matter was again brought up on a limited issue raised through a Letter dated 05.04.2019 which was sent by Deputy Commissioner, PIFC (Port), Kolkata to Assistant Commissioner of Central Excise Guwahati, to ascertain whether compliance of Conditions No.2 and 3 of Sr No. 232 of Notification No. 12/2012-CE dated 17 March 2012 were fulfilled by the appellant or not.

After verification it was replied by the Assistant Commissioner, Central Excise, Gauhati under letter dated 09.05.2019 to the Department. It appeared to Revenue, the appellant had violated the provisions of Regulations 5 & 7 of PIR 1986 r/w Board Circular No.22/2011 Cus. dated 04.05.2011, culminating into a SCN dated 30.09.2020 which was issued asking the appellant to show:-

(a) Why the provisional assessment of imported goods under B/E No. 7356551 dated 12.11.2014, should not be finalized extending the claimed duty benefit under SI. No. 510, instead of SI. No. 515 of Notification No. 12/2012-Cus dated 17.03.2012.

(b) Why the imported goods assessed under CTH 98010020 at concessional rate of duty, should not be finally assessed extending the claimed duty benefit under SI No.510, instead of SI. No. 515, of the Notification No.12/2012-Cus to the duty tune of Rs.12,95,061/- u/s 18(2) r/w Sec 17 of the Customs Act, 1962.

(c) Why differential duty amounting to Rs.12,95,061/- should not be paid u/s 18(2) along with appropriate interest under Section 18(3) of Customs Act 1962;

(d) Why the P.D. Bonds as executed against the provisional assessment, should not be enforced u/s 143 of Customs Act, to recover the duty along with the applicable interest;

(e) Why the Penalties for contravention of Section 117 of Customs Act, should not be imposed for non-renewal of Bank Guarantee No.1907ILG004419 dated 26.03.2019, which has expired 31.12.2019.

6. In Reply dated 14.12.2020 to the SCN, the appellant submitted that the SCN was time barred because even though no time limit is prescribed u/s 18(2) of the Customs Act for issuing the SCN, various judgments of Hon'ble High Courts and the Hon'ble Supreme Court prescribe a maximum time limit of 5 years as 'reasonable period", were submitted to the Learned Adjudicating Authority thereby showing the

SCN to be absolutely time barred as it has been issued after more than 5 years. Various other grounds in defence were also submitted by the appellant. However, the O-I-O was passed by the lower adjudicating authority confirming the duty demand, interest, enforcement of P.A. Bond, encashment of Bank Guarantee, but dropping Penalty u/s 117 of the Customs Act.

7. Being aggrieved the Appellant preferred appeal before the Commissioner (appeals), who observed in the impugned order-in-appeal, that the Appellant is contesting on the ground of limitation and not on the basis of merit. Further it is observed that no specified time limit is provided to issue demand notice under section 18(2) of the Customs Act. Further observed that the case law relied upon by the Appellant State of Punjab Vs. Bhatinda District Co-operative Milk P. Union Ltd 2007 (217) E.L.T. 325 (S.C.), wherein it was held that where no limitation is prescribed, a reasonable period of limitation needs to be considered for issue of notice which shall be a maximum period of 5 years. This has been further followed in Gupta Smelters Private Limited 2019 (365) ELT 77 and a catena of decisions. However, the Learned Commissioner (appeals) observed that the ruling of Supreme Court is case specific and cannot be presumed that it will apply squarely in every case to decide or issue notice within maximum time limit of 5 years. Further observed that no circular/notification had been issued by the Board after pronouncement of the ruling by the Supreme Court in the case of Bhatinda District Co-op. Milk P. Union Limited. Accordingly, the appeal was dismissed.

8. Being aggrieved the Appellant is before this Tribunal. Inter alia on the ground that the Bill of Entry was filed on 12 November 2014, whereas the Show Cause Notice has been issued on 30th September 2020 after more than five years. It is further stated that all formalities/documentation pertaining to the import of goods under the Project Imports Regulations were completed. Drawing attention to the averments in Para 6 of the SCN which reads – 1st letter dated 19/02/2016, pursuant to audit query dated 22nd January 2016 was

issued and 2nd letter was issued dated 16 March 2016. These letters were duly replied by the Appellant through the letter number GE/CS/12 – 13/222 dated 30 May 2016. In Para 8 of the SCN, there is reference to audit query being reference number No. RA/CRA/PA on Proj.Imp/2016-17 dated 14 July 2016 was raised by CRAD for short levy of duty due to incorrect application of exemption notification. This was also replied by the Appellant with proper clarifications being reply dated 20 August 2016. It is further evident from the SCN that the goods were assessed, extending benefits under Serial No. 515 of exemption notification No. 12/2012 –Cus dated 17th March 2012 with custom duty at the rate of 5% BCD and Nil CVD. Further the Appellant had disagreed with the audit objections. Further it is evident from Para-11 of the SCN that Plant Site Verification Report dated 8th November 2017 and 15th January 2018 were sent from the office of Assistant Commissioner of Central Excise Guwahati, which had been accepted by the Department. In view of the aforementioned facts and circumstances issue of Show Cause Notice after lapse of 5 years, is badly hit by limitation and accordingly prayed for allowing the appeal and setting aside the impugned order.

9. Learned AR for revenue relies on the impugned order. He also draws my attention to Regulation of Project Imports Regulations, 1986 which provides that the importer shall within '3 months' from the date of clearance of home consumption of the last consignment of the goods or within such extended period as the proper officer may allow, submit a statement indicating the details of the goods imported together with the necessary documents as proof regarding the value and quantity of the goods so imported in terms of this Regulation and any other document that may be required by the proper officer for finalization of the contract.

10. Having considered rival contentions, I find that the Show Cause Notice has been clearly issued after more than five years from the material date i.e. 12 November 2014 when the Bill of Entry was filed and assessed. Further the Appellant had complied with the

requirements of the Project Imports Regulations and completed the documentation. I further find that the Show Cause Notice has been issued by way of change of opinion beyond the period of five years. Accordingly, I hold that the Show Cause Notice is hit by limitation.

11. Also, Regulation 7 of PIR 1986 is not a mandatory provision as held by the following:-

- Hon'ble Andhra Pradesh High Court in CCE Hyderabad vs. Creative Indus Pvt Ltd 2012(282) ELT 349
- Gas Authority of India Ltd 2003 (159) ELT468
- CESTAT Delhi in Final Order No. 51032-51033/2022 dated 27.10.2022 in Appeal Nos. C/50275-50276/2021

12. In view of my aforementioned observations and findings, I allow this appeal and set aside the impugned order. The Appellant shall be entitled to consequential benefits in accordance with law.

(Pronounced in the open court on 27.06.2023)

Sd/-

(Anil Choudhary)
Member (Judicial)

Pooja