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CESTAT Mumbai Quashes Customs Duty Demand on Redeployed Project Imports

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

The Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), Mumbai, recently delivered a significant judgment in a series of appeals concerning the classification and treatment of goods imported under the "Project Imports" category. This decision, pronounced on September 19, 2025, sheds light on the complexities surrounding the Customs Act, 1962, and the Project Imports Regulations, 1986, while addressing the rights and obligations of importers and customs authorities.

Background of the Case

The appeals were filed by M/s Era Infra Engineering Ltd, M/s Aravali Power Company Pvt Ltd, and individuals associated with these entities. The dispute revolved around the import of five piling rigs valued at ₹10,98,98,857 for the Indira Gandhi Super Thermal Power Project in Jhajjar, a mega power project. The applicable customs duty of ₹3,27,47,724 was exempted under a notification, as the goods were classified under heading 9801 of the Customs Tariff Act, 1975, which pertains to "Project Imports."

After completing the project, the rigs were redeployed to another mega power project. Customs authorities initiated proceedings, alleging that the exemption was specific to the original project and that the transfer breached conditions outlined in a circular. Consequently, they demanded recovery of the exempted duty, imposed penalties, and confiscated the rigs, allowing redemption upon payment of ₹2,00,00,000.

Key Issues Addressed

The central issue was whether customs authorities could levy duties and penalties on goods classified under "Project Imports" after their redeployment to another project. The appellants argued that:

1. **No Restriction on Redeployment:** The Project Imports Regulations, 1986, and related notifications did not explicitly restrict the redeployment of goods after the completion of the original project.
2. **Finalization of Provisional Assessment:** Once the provisional assessment was finalized, there was no legal basis for re-evaluating the eligibility of the goods for exemption.
3. **Auxiliary Equipment Classification:** The goods were auxiliary equipment, which the Supreme Court had previously ruled as eligible for exemption under heading 9801, even if redeployed.

Tribunal's Observations

The Tribunal examined several precedents, including Toyo Engineering India Ltd, NOCIL, and Whirlpool of India Ltd, which clarified the treatment of auxiliary equipment under Project Imports. It noted:

- **Auxiliary Equipment Eligibility:** Auxiliary equipment used for the initial setup of a project remains eligible for classification under heading 9801, even if redeployed or transferred.
- **No Perpetual Liability:** The classification and assessment of goods at the time of import cannot be altered based on subsequent redeployment, as long as the initial conditions were met.
- **Absence of Explicit Restrictions:** The Project Imports Regulations, 1986, and related notifications do not impose restrictions on the disposal or redeployment of goods after the completion of the project.

Final Decision

The Tribunal set aside the impugned order, ruling in favor of the appellants. It held that customs authorities could not recover duties or impose penalties on goods that were eligible for exemption at the time of import and had undergone final assessment. The appeals were allowed, providing clarity on the treatment of goods under Project Imports.

Implications of the Judgment

This landmark decision has far-reaching implications for businesses and customs authorities:

1. **Clarity on Project Imports:** The judgment reinforces the principle that goods classified under heading 9801 are eligible for exemption, even if redeployed, as long as the initial conditions are met.
2. **Protection for Importers:** Importers can now rely on this precedent to safeguard their rights against retrospective demands and penalties.
3. **Streamlining Customs Processes:** The ruling emphasizes the importance of clear regulations and reduces ambiguity in the treatment of goods under Project Imports.

Conclusion

The CESTAT's decision is a significant step toward ensuring fairness and transparency in customs assessments. It highlights the importance of adhering to established legal principles and provides much-needed clarity for importers navigating the complexities of Project Imports. As businesses continue to engage in large-scale infrastructure projects, this judgment serves as a guiding light for the treatment of auxiliary equipment and the scope of customs exemptions.

Source: CESTAT Mumbai

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CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

CUSTOMS APPEAL NO: 86849 OF 2013

[Arising out of Order-in-Original CAO No: 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Ajay Garg
Era Infra Engineering Ltd
370-371/2 Sahi Hospital Road, Jungpura, Bhogal
New Delhi - 110014 … ***Appellant***

versus

Commissioner of Excise Customs (Import)
Ballard Estate, New Customs House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86850 OF 2013

[Arising out of Order-in-Original CAO No: 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Era Infra Engineering Ltd
370-371/2 Sahi Hospital Road, Jungpura, Bhogal
New Delhi - 110014 … ***Appellant***

versus

Commissioner of Excise Customs (Import)
Ballard Estate, New Customs House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86851 OF 2013

[Arising out of Order-in-Original CAO No: 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Hem Singh Bharana
Era Infra Engineering Ltd
370-371/2 Sahi Hospital Road, Jungpura, Bhogal
New Delhi - 110014 … ***Appellant***

versus

Commissioner of Excise Customs (Import)
Ballard Estate, New Customs House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86852 OF 2013

[Arising out of Order-in-Original CAO No: 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Vishesh Kumar Walia
Era Infra Engineering Ltd
370-371/2 Sahi Hospital Road, Jungpura, Bhogal
New Delhi - 110014 … ***Appellant***

versus

Commissioner of Excise Customs (Import)
Ballard Estate, New Customs House, Mumbai - 400001 ***…Respondent***

WITH

CUSTOMS APPEAL NO: 86854 OF 2013

[Arising out of Order-in-Original CAO No: 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Aravali Power Company Pvt Ltd
NTPC Bhavan, Scope Complex, 7 Institutional Area
Lodhi Road, New Delhi - 110003 … ***Appellant***

versus

Commissioner of Excise Customs (Import)
Ballard Estate, New Customs House, Mumbai - 400001 ***…Respondent***

AND

CUSTOMS APPEAL NO: 86855 OF 2013

[Arising out of Order-in-Original CAO No: 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013 passed by the Commissioner of Customs (Import), Mumbai.]

Om Prakash Srivastava
Aravali Power Company Pvt Ltd … ***Appellant***

NTPC Bhavan, Scope Complex, 7 Institutional Area
Lodhi Road, New Delhi - 110003

versus

Commissioner of Excise Customs (Import)
Ballard Estate, New Customs House, Mumbai - 400001 ***…Respondent***

APPEARANCE:

Shri Vijay Kumar Singh, Consultant for the appellants

Shri Priyesh Bheda, Joint Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86344-86349/2025

DATE OF HEARING: 20/03/2025
DATE OF DECISION: 19/09/2025

PER: C J MATHEW

The limited issue in these appeals, of M/s Era Infra Engineering Ltd, M/s Aravali Power Company Pvt Ltd, Shri Ajay Garg, Shri Hem Singh Bharana, Shri Vishesh Kumar Walia and Shri Om Prakash Srivastava, is the empowerment vesting in the customs authorities to levy duties of customs under section 28 of Customs Act, 1962, besides confiscation of such goods, in the absence of any specific restriction on re-deployment of goods comprising 'project import', chargable to duty corresponding to heading 9801 of First Schedule to Customs Tariff Act, 1975 and subject to Project Imports Regulations, 1986 consequent upon

finalization of provisional assessment.

2. M/s Era Infra Engineering Ltd had imported five nos. 'piling rigs' valued at ₹ 10,98,98,857 in connection with setting up of the Indira Gandhi Super Thermal Power Project Jhajjar, a mega power project contracted by M/s Aravali Power Company Pvt Ltd and in turn sub-contracted to them, between December 2007 and March 2008. The applicable duty of ₹ 3,27,47,724 was foregone in accordance with notification[1] and, on completion of the job on 7th March 2009 and closure of assessment, M/s Era Infra Engineering Ltd informed customs authorities on 7th March 2009 about the re-deployment of four of the rigs with another mega power project.

3. On the premise that exemption is specific to the project for which clearance was effected and holding the condition of transfer in circular[2], permitting transfer of construction equipment to another registered project, as breached, proceedings were initiated against the appellant herein to culminate in order[3] for recovery of ₹ 3,27,47,724 under section 28 of Customs Act, 1962, with applicable interest under section 28AB of Customs Act, 1962 thereon and confiscation of the rigs under section 111(o) of Customs Act, 1962 that were permitted to be redeemed on payment of ₹ 2,00,00,000, in addition to imposition of

[1] [no. 21/2002-Cus dated 1st March 2002 (at serial no. 400)]
[2] [no. 49/2011-Cus dated 4th November 2011]
[3] [order-in-original CAO no. 09/2013/CAC/CC(I)/AB/Gr.CC dated 30th January 2013]

penalties under section 114A of Customs Act, 1962 and under section 112 of Customs Act, 1962.

4. According to Learned Consultant appearing for appellants, there was no provision in law for restricting the use of goods used in setting up of projects and nor any provision for construing these as fresh imports upon conclusion of the provisional assessment under section 18 of Customs Act, 1962 for levy of duties of customs. It was also submitted that, with the exemption extended as eligible followed by finalization of the provisional assessment, there was no scope for recourse to section 28 of Customs Act, 1962 on such goods on fresh evaluation of threshold eligibility. He contended that these were, in effect, 'auxiliary equipment' which the Hon'ble Supreme Court, in *Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd [2006 (201) ELT 513 (SC)]*, had not only acknowledged as 'project import' but also accorded finality to outright non-taxability thereof. It was submitted that the adjudicating authority had not taken note of the completion and closure of drilling undertaken at Indira Gandhi Super Thermal Power Project and re-deployment in another mega power project. It was submitted that, in *NOCIL v. Commissioner of Customs (I), Mumbai (2017 (347) ELT 173 (Tri.-Mumbai)]*, the Tribunal had held that, even where the goods cleared for 'project imports' were sold after being duly installed in the factory, recovery of duty was not enabled as consequence. Relying upon the decision of the Tribunal, in

Whirlpool of India Ltd v. Commissioner of Customs (Import), Mumbai [2017 (358) ELT 588 (Tri - Mumbai)], it was argued that Project Import Regulations, 1986 specifies certain conditions of eligibility and with no restriction insofar as disposal of the equipment are concerned. It was pointed out that the adjudicating authority had erred in denying classification against tariff heading 9801 which, according to him, remains unaltered even if the conditions and expressions are breached after threshold conditions were complied with and notwithstanding remedy available to the exchequer for recovery of duty for that reason.

5. According Learned Authorized Representative the re-deployment of goods at another project that was not registered under Project Import Regulations, 1986 was within the knowledge of the all the appellants. Learned Authorized Representative placed reliance on the decision of the Hon'ble Supreme Court in *Jacsons Thevara v. Commissioner of Customs and Central Excise [1992 (61) ELT 343 (SC)*, and of the Tribunal in *Commissioner of Customs, Mumbai v. NRB Bearing Ltd [2003 (159) ELT 755 (Tri-Mumbai)]* and in *Commissioner of Customs, Visakhapatnam v. Sunshine Pulp & Papers Pvt Ltd [2004 (178) ELT 551 (Tri-Bang)]*.

6. It is seen that the issue of re-deployment of assets imported for use in eligible ‘projects’, classifiable against heading 9801 of First Schedule to Customs Tariff Act, 1975, had been the subject of several

dispute and the special treatment available to 'auxiliary equipment' was set out by the Hon'ble Supreme Court in *re Toyo Engineering India Ltd*, including exemption in accordance with Project Import Regulations, 1986 as well as in the event of its deployment elsewhere subsequently thus

> *'14. We do not find any substance in this submission. In that case this Court did not consider the vehicles imported to be an item of auxiliary equipment required for setting up of an initial unit on the ground that it was used only in shifting of the transformers which would not constitute an integral part of the power project. The vehicles imported were required for transportation of the transformers from railway yards to the erection sites and had no relation to power generation or power project. After transporting the specified number of transformers to the site of sub-station the utility of the vehicles would be over at the end of such transport and thereafter the vehicles could certainly be used for other purposes of the assessee. That the vehicles, which are used in the shifting of the transformers, would not constitute integral activity of the project. In the present case goods imported by the respondent are hydle truck cranes, excavator, shovel loader, truck, forklift truck, power generators, diesel welder, welding rectifier, containers tools and tackles instruments, level Nako with tripod, theodtite nako with accessories and tripod besides window air-conditioners, electric typewriter and camera with flash (the total cost of last three items is only Rs. 70,000/-, which is negligible). In fact, it was not disputed before the Tribunal or before us as well that the construction equipments imported by the respondent were used in the initial setting up of the plant. The goods imported by the respondent such as hydle truck cranes, excavator, shovel loader, truck, forklift*

truck, power generators, diesel welder, welding rectifier, containers tools and tackles instruments, level Nako with tripod and theodlite nako with accessories and tripod would certainly be auxiliary equipments which would help in the initial setting up of the industrial plant. The facility of the project import was denied to the respondent because the ownership of the imported goods did not pass to the project authority. Since it is not disputed that the construction equipments imported by the respondent were used in the initial setting up of the plant, then, as per the provisions of Heading 98.01 of the Tariff Act the respondent could not be denied the benefit of the project import.'

7. In *re NOCIL*, the Tribunal held

'4. We have gone through the rival submissions. We find that the Revenue has failed to establish any provision under Notification No. 132/85 or the Project Import Regulations or under Chapter Heading 98.01 that prohibited sale of goods imported under Chapter Heading 98.01. The Chapter Heading 98.01 is a facility extended and not a concession granted. When a complete plant is imported, it may consist of thousands of different items, parts and components. To classify each and every component separately and to determine the value of each and every component would be a herculean task wasting time of importer as well as Revenue. In these circumstances, Chapter Heading 98.01 has been introduced where the entire plant is classified under a single heading and charged to a single rate of duty. In the instant case, the appellant has clearly imported the goods for bona fide use and manufacture of the intended final product. They have installed machinery in their plant and put the equipment to use for more than two years. It is only when the plant became unviable and was lying idle for more than 18 months that the appellant disposed of the plant.

We find that in the absence of any restriction of such sale, the benefit of assessment under Chapter Heading 98.01 cannot be denied. The learned AR has relied on the decision of the Tribunal in the case of Bharat Bijlee Ltd. v. CC, Mumbai - 2014 (314) E.L.T. 74. In the said case, the imported goods were not used at all for the purpose for which the same were imported. In the instant case, it is not disputed that the imported goods were used for the intended purpose for a period of over two years and thus the decision of the Tribunal in the case of Bharat Bijlee Ltd. (supra) is not applicable to the instant case. The learned AR also referred to the decision of the Hon'ble Supreme Court in the case of CC, Mumbai v. Toyo Engineering India Ltd. - 2006 (201) E.L.T. 513 (S.C.). In the said case, the Apex Court has observed as follows :-

> *"12. It is not disputed that construction equipments imported by the respondent were used in the initial setting up of the plant. The Assistant Collector and the appellate authority denied the facility of the project import as the ownership of the imported goods would not pass to the project authority and that the machinery imported could be utilized elsewhere in the setting up of any other plant. What is required under Heading 98.01 Tariff Act is that the machinery imported should be required "for the initial setting up of a unit, or the substantial expansion of an existing unit". This heading specifically mentions and includes "auxiliary equipment". The "auxiliary equipment" has not been defined under the Tariff Act. As per Dictionary meaning, extracted above, it is an equipment which aids or helps. Any equipment which aids or helps in the setting up of an industrial plant would fall and be covered under Heading 98.01 of the Tariff Act. The mere possibility of its being used subsequently for other project would not debar the respondent from availing the facility of project import. If the contention of the Revenue is accepted, then resultant effect as put by the Tribunal would be :*
>
> *"...no equipment can be imported for projects like Konkan Railway Project, Road Development Projects of the National Highway Authority of India, etc. specified under Heading 98.01 of CTA."*
>
> *We agree with this observation of the Tribunal.*

14. We do not find any substance in this submission. In that case this Court did not consider the vehicles imported to be an item of auxiliary equipment required for setting up of an initial unit on the ground that it was used only in shifting of the transformers which would not constitute an integral part of the power project. The vehicles imported were required for transportation of the transformers from railway yards to the erection sites and had no relation to power generation or power project. After transporting the specified number of transformers to the site of sub-station the utility of the vehicles would be over at the end of such transport and thereafter the vehicles could certainly be used for other purposes of the assessee. That the vehicles, which are used in the shifting of the transformers, would not constitute integral activity of the project. In the present case goods imported by the respondent are hydle truck cranes, excavator, shovel loader, truck, forklift truck, power generators, diesel welder, welding rectifier, containers tools and tackles instruments, level nako with tripod, theodtite nako with accessories and tripod besides window air-conditioners, electric typewriter and camera with flash (the total cost of last three items is only Rs. 70,000/-, which is negligible). In fact, it was not disputed before the Tribunal or before us as well that the construction equipments imported by the respondent were used in the initial setting up of the plant. The goods imported by the respondent such as hydle truck cranes, excavator, shovel loader, truck, forklift truck, power generators, diesel welder, welding rectifier, containers tools and tackles instruments, level nako with tripod and theodlite nako with accessories and tripod would certainly be auxiliary equipments which would help in the initial setting up of the industrial plant. The facility of the project import was denied to the respondent because the ownership of the imported goods did not pass to the project authority. Since it is not disputed that the construction equipments imported by the respondent were used in the initial setting up of the plant, then, as per the provisions of Heading 98.01 of the Tariff Act the respondent could not be denied the benefit of the project import."

We find that in the said case also, it was held that the equipment which was required for initial setting up of the plant, but later any operations need not be transferred to the project authorities. Thus, to that extent, the said decision supports the case of the appellant.'

8. Furthermore, in *re Whirlpool of India Ltd*, the Tribunal held that

'6. From the above it would appear that an import governed by Project Import Regulations, 1986 specifies registration of

contract and finalisation within a stipulated time. A natural consequence is that the machinery is required to be installed in accordance with the terms of the contract which is entered into for establishing a new unit or for substantial expansion of an existing unit. It would also appear that the importer is obliged to submit the stipulated documents within the prescribed time for finalisation of assessment. Beyond these, no other restrictions have been included in the Regulations or in any of the connected notifications.

7. Our attention has been drawn by learned Authorized Representative to the decision of the Tribunal in Tata Steel Ltd. v. Commissioner of Customs (Import), Mumbai [2015 (320) E.L.T. 462 (Tri.-Mumbai)] which he considered to be pertinent as that was rendered in the same circumstance of 'substantial expansion' and it was held by the majority that the facility of 'project imports' is liable to be denied if the imported goods did not yield substantial expansion. It is his contention that relocation precluded that desired outcome. We find from the records that the appellant has placed on record, in letter dated 26th October, 2004 addressed to the Assistant Commissioner of Customs, the circumstances of relocation and that the project had yielded substantial expansion as evident in the balance sheet for October, 1995 to December, 1996. It would, therefore, appear that the decision in re Tata Steel Ltd. is not applicable in the present instance. The decision in re Jacsons Thevara upheld the action taken against the importer for having sought assessment as 'project import' when an agreement had already been entered into that would render that claim of 'substantial expansion' to be non-implementable.

8. Learned Counsel places before us the decision of the Tribunal in NOCIL v. Commissioner of Customs (I),

Mumbai [2016-VIL-788-CESTAT-MUM-CU = 2017 (347) E.L.T. 173 (Tri.-Mum.)] which, relying upon the decision of the Hon'ble Supreme Court in Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd. [2006 (201) E.L.T. 513 (S.C.)], held that perpetual ownership and possession of the imported goods by the project authority was not a condition prescribed for eligibility.

9. It would appear that the impugned order has presumed a state of perpetual subjection to scrutiny for eligibility to the benefits of the assessment as 'project import' and the underlying assumption is that such imports are the beneficiaries of concessional rate of duty. That is the thrust of the contention of learned Authorized Representative. While a number of decisions of the Hon'ble Supreme Court such as in Commissioner of Customs (Import), Mumbai v. M/s. Jagdish Cancer & Research Centre [2001 (132) E.L.T. 257 (S.C.)] have held such perpetual liability to be a valid principle, we cannot ignore the predicating of such a liability to an exemption granted subject to conditions. Coverage as 'project imports', which may or may not be entitled to an effective rate of duty extended through a notification issued under Section 25 of Customs Act, 1962, is a consequence of classification under heading 9801 of the First Schedule to the Customs Tariff Act, 1975 and the dispute between Revenue and appellant is one of determination of classification under this head or the alternative of segregating the various components of the project under their respective classifications. The consequence of classification under 9801 of the First Schedule to the Customs Tariff Act, 1975 is the bundling of goods; and the conditions that are prescribed in the regulations are related to that bundling for increasing the production capacity of the economy. There is no condition other than import in that state for installation in that form. There is no allegation of

disaggregation of the imported goods and, therefore, its possession by another entity does not detract from the principal objective of such bundled classification, i.e. capacity building.

10. It is also not a condition of any import - whether assessed provisionally or finally - that the goods should retain the form, structure and ownership that existed at the time of import. The transfer of ownership or relocation of the project after installation and meeting with the project objectives would not erase the classification and assessment that prevailed at the time of import.

11. Eligibility for such classification at the time of import, compliance with project approval conditions and installation at the permitted site are not in dispute here. Classification as 'project import' and assessment thereof cannot be denied.'

9. In *re Jacsons Thevara*, the issue for consideration was that imported machinery, which were not 'auxiliary equipment', was transferred beyond the scope of Project Import Regulations, 1986. In *re NRB Bearings*, the Tribunal followed the decision in *re Jacsons Thevara* as the dispute pertained to equipment that could not be categorized as 'auxiliary equipment, and the transfer to another unit of the importer was assailed by following the judicial decisions as existing then. In *re Sunshine Pulp & Papers Pvt Ltd* the ratio of the decision in *re Jacsons Thevara* was followed. The decision of the Hon'ble Supreme Court in *re Toyo Engineering India Ltd* assigned a specific disposition of 'auxiliary equipment' that were not intended to merge with the asset of the project itself and was determined as deserving of

separate treatment. Accordingly, exception, set out in the impugned circular of Central Board of Excise and Customs (CBEC), was afforded regularization thereof. It may be noted that the said circular enlarged upon the Project Imports Regulations, 1986 primarily for the purpose of enabling assessment of 'auxiliary equipment' within the scope of Project Import Regulations, 1986. Though the circular did also restrict the transferability to registered projects such condition was not enshrined within the Project Import Regulations, 1986. It is in that context the Tribunal, in *re NOCIL* and in *re Whirlpool of India Ltd,* held that the disposal of 'auxiliary equipment' that were eligible at the threshold and having had the provisional assessment were duly finalized, could not be subjected to duty thereafter in the absence of specific restrictions providing for recovery of duty as consequence of breach.

10. Respectfully following the decisions *supra*, we set aside the impugned order and allow all the appeals.

(Order pronounced in the open court on 19/09/2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*