CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Customs Miscellaneous Application No.41044 of 2025
&
Customs Appeal No.40899 of 2023

(Arising out of Order-in-Original No.102903/2023 dated 16.08.2023 passed by Commissioner of Customs, Chennai-II (Imports), Custom House, No.60, Rajaji Salai, Chennai - 600 001)

M/s.NTC Logistics India Pvt. Ltd., **....Appellant**
New No.97, Old No,47,
Linghi Chetty Street,
Chennai-600 001.

Versus

Commissioner of Customs **... Respondent**
Chennai-II (Imports),
Custom House, No.60, Rajaji Salai,
Chennai-600 001.

APPEARANCE:

Shri J. Srinivasan, Chartered Accountant for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.40050/2026

DATE OF HEARING: 28.11.2025
DATE OF DECISION: 09.01.2026

Per: Shri P. Dinesha

This Appeal is filed against the Order-in-Original No.102903/2023 dated 16.08.2023, whereby the Adjudicating Authority viz., the Commissioner of Customs, Chennai-II (Imports) has confirmed the demand of Customs duty [comprising Basic Customs Duty (BCD), Social Welfare Surcharge (SWS) and Integrated Goods and Services Tax (IGST)] in respect of re-import of certain goods apart from ordering confiscation of goods, redemption fine and penalties.

2. Brief, relevant and admitted facts as could be gathered upon hearing rival contentions and after going through the impugned Order-in-Original are that the Assessee is engaged in the business of providing logistics, transportation and supply chain management services to its customers located both within and outside India; is also holding valid Importer Exporter Code. The Assessee has claimed which is also

undisputed by the Revenue that it undertakes large–scale logistics and transportation projects requiring deployment of specialized equipment like cranes, trailers, hydraulic axles, trucks and machinery; and it is also an undisputed fact that such equipment constitute capital assets of the Assessee-Company, who continues to hold control over or rather remain the property of the Assessee at all material times.

3. During the period under dispute, Vestas Asia Pacific A/s, Denmark undertook the setting up of a 103 MW Wind Power Project comprising 30 Wind Operated Electricity Generators in Sri Lanka and for execution of a portion of the said project, M/s.VESTAS Wind Lanka Private Limited (VWLPL), Sri Lanka [overseas entity] issued a purchase order dated 29.05.2019 to the Appellant for providing transportation and logistic services within Sri Lanka in relation to turbine equipment and parts. The scope of work under purchase order was limited to transportation services between the specified locations in Sri Lanka, but however, the same did not involve supply, sale, or transfer of ownership of any of the goods by the Assessee to the said overseas entity. For the purposes of executing for service contract abroad, the Assessee was required to deploy its own specialised equipment at the project site in Sri Lanka

and accordingly, it moved certain goods such as cranes, trailers, trucks and tools from India to Sri Lanka. The movement of these goods apparently was undertaken under shipping bills filed with under NFE (No Foreign Exchange) with GR waiver and it is an admitted and undisputed factual position that there was no sale of these goods, no consideration was ever received towards supply of the goods in question, no transfer of title or ownership took place and the goods always remained the property of the Appellant. The only consideration received by the Appellant was towards provision of transportation services for which service invoices were raised on VWLPL, which were declared in the GST returns of the Assessee as 'export of services'.

4. Upon completion of the above project work in Sri Lanka, it appears that the Assessee re-imported the said goods into India between May 2020 and December 2020 vide Bills of Entry, at the time of re-import the Appellant appears to have claimed exemption from payment of Customs duties under Sl.No. 5 of Notification No. 45/2017–Customs dated 30.06.2017 ['Notification'] as the goods were undisputedly of Indian origin which were taken out of India otherwise than by way of supply and were being brought in or re-imported

within the period prescribed under the Notification. It is a matter of record that the goods in question were assessed and cleared by the Customs authorities at the time of re-import.

5. It appears that subsequently, Department initiated post–clearance audit proceedings during which time they appear to have noticed that the Shipping Bills under which the goods in question were exported mentioned a Letter of Undertaking (LUT) and on that basis, the Audit assumed that the goods had been exported under Bond or LUT without payment of Integrated Goods and Services Tax [IGST] and, therefore, the import of the goods would fall under Sl. No. 1(d) of the Notification; the IGST having not been paid at the time of export would therefore become payable as Customs Duty on reimport. This resulted in an Audit Consultative Letter dated 01.03.2021 proposing demand of IGST in respect of certain Bills of Entry. The Assessee appears to have submitted a very detailed reply to the above Audit Objections/Audit Consultative Letter contending that the original movement of goods from India to Sri Lanka did not constitute 'supply' within the meaning of Section 7 of Central Goods and Service Tax Act, 2017 read with the IGST, 2017 and, therefore, no

IGST was payable at the time of export; when no IGST was payable at the very time of export the question of payment of IGST on re-import under Sl. No. 1(d) of Notification did not arise. It appears to have also explained that mere mention of LUT in the Shipping Bills could not convert a non–supply into taxable supply. Despite the above explanation, however, a pre–Notice consultation letter dated 17.03.2022 was issued proposing to demand differential duty, BCD, SWSC and IGST in respect of certain Bills of Entry in response to which, the Appellant appears to have once again filed a detailed reply in writing pointing out that the proposal itself was internally inconsistent, that the Notification did not prescribe six month time limit for import in cases falling under Sl. No.5 and that the proposal to demand *inter alia* BCD, was beyond the scope of the Notification.

6. Not accepting any of the explanation/s filed by the Appellant, a Show Cause Notice dated 03.11.2022 was issued proposing demand of Customs duty covering all the five Bills of Entry, confiscation of goods under Section 111 of the Customs Act, apart from imposition of redemption fine and penalties. In response, it appears that the Appellant filed a very comprehensive reply reiterating its stand that the

original export was itself not at all a 'supply'; hence, IGST was not payable at the time of said export or on re-import of the goods in question, that exemption under Sl.No.5 was correctly claimed and hence, the invocation of extended period of limitation, confiscation, fine and penalties were wholly unsustainable. The Adjudicating Authority viz. Commissioner of Customs, Chennai-II (Imports) however, rejecting the submissions and explanation filed by the Assessee passed the impugned order-in-Original No.102903/2023 dated 16.08.2023 confirming the proposed demands and penalties. It is against this order that the present Appeal has been filed before us.

7. We have heard Shri J. Srinivasan, Ld. Chartered Accountant for the Appellant and Ms. O.M. Reena, Ld. Additional Commissioner for the Respondent– Commissioner; we have very carefully considered the documents placed on the Appeal-record before us, including the impugned order, Grounds of Appeal and the extensive written and verbal submissions made before us by both the parties. Upon hearing the parties, we find the core issue that arises for our consideration is,

(A) Whether the temporary movement of goods by the Appellant from India to Sri Lanka for its own use in execution of a service contract constitutes 'supply'?

(B) Whether the reimport of such goods is eligible for exemption under Sl.No.5 of Notification No.45 (supra) ? and

(C) Whether the Commissioner has proved 'suppression' for invoking the extended period of limitation?

8. The other issues like levy of BCD, SWSC, fine and penalties are only consequential to our finding on the above issues.

9. We find the controversy in this Appeal primarily requires us to examine the statutory scheme governing the levy of Integrated Goods and Service Tax on goods. Section 5 of the IGST Act, 2017 is the charging provision which prescribes levy of IGST on all inter-State 'Supply of Goods or Services or both' and the taxable event under GST is 'Supply'. Section 7 of the Central Goods and Services Tax Act, 2017 defines the 'scope of supply' and lays down that for any activity or transaction to be considered a 'supply', it must ordinarily be made for a consideration and in the course of furtherance of business, subject to certain exceptions specified Schedule-I.

Mere movement of goods without consideration and without transfer of title would not therefore constitute a 'supply' unless it is specifically deemed to be so under the above Schedule-I.

10. In the case on hand, it is the case of the Appellant that the goods were moved by it to Sri Lanka on its own account, for its own use, without consideration, without transfer of ownership and without supply to any overseas entity, which, according to the Appellant was incidental to the provision of transportation services and hence, such movement may not even remotely satisfy the statutory definition of 'supply'. In fact, *vide* clarification issued by CBIC in its Circular No. 80/54/2018–GST dated 31.12.2018, the Board has categorically clarified that inter–State movement of Rigs, tools, cranes and machinery by a service provider, on own account for provision of service where no transfer of title is involved, did not constitute 'supply' and therefore the same is not liable to GST. There is also a further clarification provided there, in the same circular that execution of Bond or LUT was not required in such cases as the activity was not a 'zero–rated supply'.

11. In fact, a perusal of Pre-Notice Consultation [PNC] dated 17.03.2022 captures the following factual narration [whether disputed or not, but suffice it to say that both the parties were aware of actual facts insofar as the transaction in question is concerned]. Para 4 of the PNC, at 2nd and 5th bullets reveal as under:

> ***'They deploy various equipments such as Cranes, Trailer, Trucks, and tools required for erection & commissioning activities and bring to India. Accordingly, Shipping Bills have been filed under NFE (No Foreign Exchange) with waiver. These equipments are owned by them and there is no sale or transfer of titles of goods involved…….. They have further stated that the mention of LUT was done because there was no provision to mention 'non-taxable supplies' in the said column.'***

[Emphasized in bold by us for clarity]

12. Further, after referring to Audit Consultative Letter dated 01.03.2021 and the reply thereto filed by the Appellant, the Deputy Commissioner records at para 6 that *"From the above it is clearly evident that the Imported goods self declared as "Mover With Standard Accessories and other items classified under CTH 87012090/ 87164000 / 87169090 / 84133030 / 85021100 / 94059900 /84264900 (as the case may be) and BCD @ 0%, SWS @ 0% and IGST @ 0% by availing benefit under Sl.No.05 of Notification No.46/2017 dated 20.06.2017 have been paid for*

the said goods. However on perusal of the Shipping Bills it is seen that the goods were exported on LUT……."

13. A perusal of the impugned order also reveals that though the Commissioner did not dispute the factual position that the goods in question were not supplied, sold or transferred; however, it seeks to derive taxability solely for the mention of 'LUT' in the Shipping Bills. Both the authorities, one who issued PNC and the one who passed the impugned order, have conveniently ignored the explanation which also stands reproduced in the bullets which we also have extracted herein above, in this very paragraph, that the same is done because there was provision to mention 'non-taxable supplies' in the said column. It is, however, not the case of the Commissioner that the Appellant was wrong or that there was some other mode available for mentioning 'non-taxable supplies'. Hence, the counter by the Appellant, and rightly so, that the approach was fundamentally flawed since any tax liability could not be created by procedural declarations or system–driven requirements; the existence or mention of 'Letter of Undertaking' could never determine the taxability of a transaction since what is necessarily relevant and determinative is whether the transaction falls within the

charging provisions or not. When the charging provision itself is not attracted, the compliance or non-compliance with requirements would naturally become irrelevant. Hence, it is our view that the movement of goods from India to Sri Lanka did not constitute a 'supply'. In view of the above, there would be no levy under IGST at the time of export and consequently, the very foundation for application of Sl. No.1(d) of Notification disappears. Our understanding, therefore, is that serial No. 1(d) of the Notification may perhaps apply in cases where goods are exported under Bond or on LUT without payment of IGST, in situations where IGST was otherwise payable. It contemplates recovery of IGST that was payable but not paid at the time of export and hence, it may not apply to cases where IGST was not at all payable.

14. The Original Authority, in our view, has also erred in holding that failure to satisfy Sl. No.1(d) disentitled the Appellant from claiming the benefit of Sl.No.5. Sl. No.5 of the Notification, in our view, is a distinct and independent entry that perhaps would be applicable to goods of Indian origin exported otherwise than by way of supply and re-imported within the stipulated period. The conditions applicable to one serial number can never be made applicable or into another

as such an interpretation would only render Sl. No.5 otiose, which is not the intention of the legislature. One size does not fit all! We are of the view that both these serial numbers operate with different objectives. A perusal of Notification makes it further clear that the same would recognize the category of goods exported otherwise than by way of supply; the Notification therefore proceeds on the legislative recognition that there could also be exports which are not 'supplies'. The Original Authority in the impugned order has however, treated every export accompanied by LUT as a supply, has thus negatived the statutory recognition and thereby has chosen to rewrite the Notification, which is clearly beyond the scope of his statutory limitations.

15. Original Authority has also placed considerable reliance on Circular No.21/2019–Customs dated 24.07.2019 to contend that the benefit of exemption on re–import is available only if the goods are re-imported within six months. We find again that such assumption is wholly misplaced and unjustified. We would refer to the PNC dated 17.03.2022, specifically para 2(ii) wherein, the Deputy Commissioner has extracted the observation of Audit and the relevant part of the said para reads thus: ' …… ***Therefore, it is of the***

view that the application of Circular No.21/2019 does not have any role…' [Emphasized by us in bold, for clarity], which only exposes the internal inconsistency, if not anything else. Other serious anomaly we observe from the Order-in-Original is that the Department is fastening the duty liability by invoking Sl. No.1(d) of the Notification; the same refers *"Goods exported under bond without payment of integrated tax" which is to the extent "as is in excess of the amount indicated in the corresponding entry in column (3) of the table."* – which is amount of integrated tax not paid. That being so, even by Sl. No.1(d) demanding *inter alia*, BCD, is glaringly contrast, which is not all flowing from the Notification.

16. Notification No.45 [*supra*] which is the parent exemption-notification clearly provides under Sl. No. 5 that goods exported otherwise than by way of supply may be re-imported within a period of three years from the date of export. We have also perused the said Notification which is placed on record before us. The same however, does not prescribe the time limit of six months under Sl. No.5 as held in the impugned order. In any case, it is a settled position of law that a circular cannot override,

amend or curtail the scope of a statutory Notification. In fact, the Apex Court in the cases of **Commissioner of Central Excise, Bolpur Vs Ratan Melting & Wire Industries** [2008 (231) E.L.T. 22 (SC)/2008-TIOL-104-SC-CX-CB] has held that circulars which are contrary to the statutory provisions have no binding force. It was held at paras 6 & 7 that:

> ***"6…. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the Executive. Looked at from other angle, a circular which is contrary to the statutory provisions has really no existence in law…***
>
> ***7……. to lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against very concept of majesty of law declared by Supreme Court and the binding effect in terms of Article 141 of the Constitution."***

[Emphasis added by us in bold for clarity]

17. The above view of the Hon'ble Apex Court was in fact ordered to be applied even by the CBEC in its Circular No. 1006/13/2015-CX dated the 21st September, 2015 [F.No.96/90/2015-CX.1].

18. Viewed thus, Circular No. 21/2009-Customs dated 24.07.2019 to the extent it purports to impose a shorter

limitation period than what is provided in the Notification cannot therefore be applied to deny a substantive exemption.

19. The Original Authority has also proceeded on the basis that exemption notifications must be strictly constituted and that the burden of proving eligibility would lie on the Claimant/Assessee for which, he has placed reliance on the judgments of Hon'ble Apex Court in (A) **CC (Import) Mumbai vs. Dilip Kumar & Company** [2018 (361) ELT 577 (SC)]

(B) **Novopan India Ltd. Vs CCE & Customs, Hyderabad** [1994 (73) ELT 769 (SC)]

(C) **Liberty Oil Mills (P) Ltd. Vs CCE Bombay** [1995 (75) ELT 13 (SC)] and such other decisions. We do not dare to dispute the ratio laid down in the above decisions, however, strict interpretation would not mean a hostile interpretation or interpretation divorced from the very statutory context. The issue in hand is not one of ambiguity in the Exemption Notification but the correct classification of transaction under appropriate entry of Notification. This apart, the decisions relied upon by the Adjudicating Authority does not in any way advance the Revenue's case as the

Appellant's claim rests on the plain applicability of Sl.No.5 after excluding Sl. Nos. 1 to 4 on admitted facts. Thus, when we observe that the export of goods in question did not constitute 'supply' and was not a 'zero-rated supply', the same is sufficient to take the case away from the mischief of Sl.No.1(d) of Notification.

20. In **Dilip Kumar's** case (*supra*), the Hon'ble Apex Court has clarified in very simple terms that where there is ambiguity in an Exemption Notification, the benefit must go to the Revenue. However, where the language of the notification is clear and unambiguous, it must be given effect to as such. In the present case, Sl. No. 5 of Notification is very much clear in its terms; it applies to goods exported otherwise than by way of supply which are re-imported within three years. The Adjudicating Authority has not demonstrated nor is there any whisper about any ambiguity in this entry; rather the Authority has sought to deny the benefit by artificially classifying the transaction under a different serial number based on a minor aspect. Further, in **Union of India And Ors. Vs Wood Papers Ltd. And Anr.** [1991 AIR 2049 :(1991) 33 ECR 235] the Hon'ble Apex Court has held that the strict interpretation would apply at the

stage of determining the eligibility; once and Assessee is found to satisfy the eligibility conditions of the Exemption Notification, such Notifications must be construed in a manner that gives full effect to its objects. In the case on hand, however, it is very much clear to us that the substantive requirements of Sl. No. 5 of the Notification are fulfilled by the Assessee-Appellant and therefore, denial of exemption solely on the basis of a procedural declaration in the Shipping Bills is legally unsustainable. The Appellant has indeed established that the goods were exported otherwise than by way of supply, that the same were re-imported within the period prescribed under the applicable statutes/Notification and that all the documentary requirements are also claimed to have been filed and hence, the denial of exemption would only amount to defeating the very legislative intent behind Sl. No.5 of Notification.

21. We also find from the impugned order that the Commissioner has held that since the conditions of Sl. No.1(d) were not satisfied, the Appellant was not entitled not only to the IGST exemption, but also the exemption of BCD and Social Welfare Surcharge (SWS). This reasoning, according to us, betrays the very fundamental

misunderstanding of the structure of Notification No.45/2017–Customs which grants exemption from different components of Customs Duty under different serial numbers and which operates under or depend on independent conditions. Even assuming for the sake of arguments that IGST exemption was not available, it does not automatically follow that exemption from BCD was also lost. This is because, BCD is levied/leviable under Section 12 of the Customs Act, 1962 and exemption from the same flows independently under the Notification. Conditions relating to IGST cannot therefore be imported into exemption from BCD, unless the Notification expressly provides for the same and hence, as a natural corollary we have to hold that the impugned order has only travelled beyond the scope of the statute.

22. The first issue is therefore answered against the Revenue.

23. The Commissioner has invoked the extended period of limitation to demand duty alleging that the Appellant had fraudulently claimed exemption but we do not find any material piece of evidence placed on record in this regard.

From the explanations filed before the Commissioner we find that all material particulars relating to export of materials/goods, re-import of the same, ownership of materials/goods, purpose of export, time or period of re-import and the claim of exemption have been disclosed through statutory documents [like Shipping Bills, Bills of Entry and accompanying declarations] based on which only the Department negatived the exemption claim for non-fulfilling of Notification; it cannot therefore be said to have played fraud or suppression. Moreover, even there is no dispute as to mentioning of 'LUT' in the very Shipping Bills which also remain disclosed so glaringly, which is available right from the beginning. The trigger point was only the misinterpretation of 'supply' and the exemption claimed relevant/applicable Notification No. 45/2017 ibid. Therefore, invoking extended period of limitation in such a situation is unwarranted and as propounded by the Hon'ble Apex Court in **Pushpam Pharmacuetical Company Vs CCE Bombay** - 1995 (78) ELT 401 (SC), **Anand Nishikawa Company Ltd. Vs CCE Meerut –** 2005 (188) ELT 149 (SC); **Uniworth Textile Ltd. Vs CCE Raipur –** 2013 (288) ELT 161 (SC) and **Continental Foundation Joint Venture Holding Vs CCE Chandigarh** - 2007 (216) ELT 177 (SC). The Hon'ble Apex

Court has time and again reiterated that "*…..the expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or 'collusion' and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. Suppression means failure to disclose full information with the intent to evade payment of duty. …….When the Revenue invokes the extended period of limitation under Section 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct*". The aforesaid judgements of Hon'ble Apex Court (*supra*) would squarely apply to this case.

24. Strangely though, the Commissioner has on the one hand accepted that the goods were not sold and ownership was not transferred; but on the other hand, proceeds to treat the export as a 'taxable supply' only because of the mention of 'LUT', which only exposes the inconsistent or contradictory stand which has made the impugned order legally

vulnerable. Taxation cannot be imposed by inference or assumptions, it must flow from or have clear support, from the Statute.

25. Insofar as the confiscation which is also challenged here in this Appeal is concerned, we have found in the earlier paragraphs that the Original Authority's finding and consequential demand are unsustainable and hence, confiscation would not arise at all. There being no import made by the Appellant by violating or contravening any law applicable for the time being in force at the relevant point of time, the confiscation as ordered cannot stand.

26. In the result, the impugned order deserves to be set aside, which we hereby do. Appeal stands allowed with consequential benefits, if any, as per law. MA filed by Appellant for raising additional grounds also stands disposed of.

(Order pronounced in open court 09.01.2026)

sd/- sd/-

(VASA SESHAGIRI RAO) **(P. DINESHA)**
Member (Technical) Member (Judicial)

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