

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
WEST ZONAL BENCH, MUMBAI

Appeal No.C/5/2010

Arising out of Order-in-Appeal No. SR/222/NGP/2009 Dated: 7.10.2009  
Passed by the Commissioner of Customs & Central Excise (Appeals),  
Nagpur

Date of Hearing: 12.4.2018  
Date of Decision: 18.5.2018

**JAYASWAL NECO INDUSTRIES LTD**

**Vs**

**COMMISSIONER OF CENTRAL EXCISE, NAGPUR**

Appellant Rep by: Shri P V Sadavarte, Adv.  
Respondent Rep by: Shri S R Nair, EO (A.R)

CORAM: Shri Ramesh Nair, Member (J)  
Raju, Member (T)

Cus - Rectification of bill of entry was denied only on the ground that the assessment of bill of entry was not challenged - Bench does not agree with this contention as there is no lis between the assessee and the department regarding eligibility of the exemption notification - only option available for rectification of bill of entry is s.154 - If the contention of the Revenue is accepted, then for each and every error occurring in the bill of entry, either by the assessee or by department, the assessment is required to be challenged, then the provisions of s.154 of the Customs Act, 1962 will stand redundant which is not the intention of law: CESTAT [para 4]

Appeal allowed

Case laws cited:

*Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) - 2004-TIOL-78-SC-CUS...Para 1, 2 & 3*

*Steel Authority of India Ltd. Vs. Commissioner of Customs, Cehnnai 2016 (343) ELT 602 (Tri.-Chennai)...Para 2*

*De Nora India Ltd. Vs. Commissioner of Cus.& Central Excise, Goa - 2012-TIOL-1134-CESTAT-MUM ...Para 2*

*Hero Cycles Ltd. Vs. Union of India - 2009-TIOL-317-HC-MUM-CUS ...Para 2*

*Commissioner of Customs, Faridabad Vs. Maharani Paints (I) Pvt. Ltd. 2011 (271) E.L.T. 294 (Tri.Del.)...Para 2*

*Sesa Goa Ltd. Vs. Commissioner of Central Excise & Customs, Goa - 2010-TIOL-1729-CESTAT-MUM...Para 2*

*Ina Bearing (India) Pvt. Ltd. Vs. Commr. of Cus. (Import), Nhava Sheva 2014 (313) E.L.T. 815 (Tri.-Mumbai)...Para 2*

*Indian Institute of Science Vs. Commr. of Cus. (Appeals), Bangalore - 2008-TIOL-2175-CESTAT-BANG...Para 2*

*Neoteric Informatique Ltd. Vs. Asstt. Commr. of Cus. (Group5), Chennai - 2014-TIOL-1998-HC-MAD-CUS...Para 3*

*CEAT Ltd. Vs. Commissioner of Customs, Kolkata 2016 (335 E.L.T. 693 (Tri.-Mumbai)...Para 3*

*Commr. of Cus. (Imp.) Nhava Sheva Vs. Eurotex Indus & Exports Ltd. - 2007-TIOL-1184-CESTAT-MUM..Para 3*

*Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. - 2002-TIOL-208-SC-CX ...Para 3*

*Commissioner of Customs (Appeals) Vs. ACE Designers - 2015-TIOL-1249-HC-MAD-CUS ...Para 3*

*Escorts Limited Vs. Union of India - 2002-TIOL-2706-SC-CX...Para 3*

*Commissioner of Customs (Import) Vs. Indian Farmers Fertilizers Co-Operative Ltd. 2009 (243) ELT 687 (Bom)...Para 4*

FINAL ORDER NO. A/86450/2018

Per: Ramesh Nair:

1. The present appeal filed by the appellant against the order-inappeal passed by the Commissioner (Appeals) whereby the Ld. Commissioner rejected the appeal of the appellant by which it was held that in view of the Hon'ble Supreme Court and CESTAT judgments in the case of *Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) 2004 (172) ELT 145 (S.C.) = 2004-TIOL-78-SC-CUS* and also keeping in view of the provisions of Section 149 & 154 of Customs Act, 1962. The rejection of the request for reassessment bill of entry was correct.

2. Shri P.V. Sadavarte, Ld. Counsel appearing o behalf of the appellant submits that the appellant filed application for rectification of bill of entry in as much as the claim of Notification No. 21/2002- Cus. Dt. 1.3.2002 was escaped in the assessment of bill of entry for that reason they filed application under Section 149/154 for rectification of bill of entry which was rejected by the lower authority on the ground that the bill of entry assessment was not challenged by the appellant. Therefore now the bill of entry cannot be rectified. He submits that in case of rectification of bill of entry no assessment is required to be challenged, there is no lis between the assessee and the department regarding the eligibility of exemption notification, the only requirement is the rectification of bill of entry. He placed reliance on the following judgments:

**(i) Steel Authority of India Ltd. Vs. Commissioner of Customs, Cehnnai 2016 (343) ELT 602 (Tri.-Chennai)**

**(ii) De Nora India Ltd. Vs. Commissioner of Cus.& Central Excise, Goa 2012 (285) E.L.T.266 (Tri.-Mumbai) =2012-TIOL-1134-CESTAT-MUM**

**(iii) Hero Cycles Ltd. Vs. Union of India 2009 (240) ELT 490 (Bom.) = 2009-TIOL-317-HC-MUM-CUS**

**(iv) Commissioner of Customs, Faridabad Vs. Maharani Paints (I) Pvt. Ltd. 2011 (271) E.L.T. 294 (Tri.Del.)**

**(v) Sesa Goa Ltd. Vs. Commissioner of Central Excise & Customs, Goa 2014 (314) ELT 674 (Tri.-Mumbai) =2010-TIOL-1729-CESTAT-MUM**

**(vi) Ina Bearing (India) Pvt. Ltd. Vs. Commr. of Cus. (Import), Nhava Sheva 2014 (313) E.L.T. 815 (Tri.-Mumbai)**

**(vii) Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) 2004 (172) ELT 145 (S.C.) =2004-TIOL-78-SC-CUS**

**(viii) Indian Institute of Science Vs. Commr. of Cus. (Appeals), Bangalore 2015 (320) E.L.T. 577 (Tri.-Bang.) =2008-TIOL-2175-CESTAT-BANG**

**3. Shri S.R. Nair, Ld. Examining Officer (A.R.) appearing on behalf of the Revenue reiterates the finding of the impugned order. He submits that since the appellant could not claim the exemption notification in the bill of entry, in order to claim the same after assessment the bill of entry is required to be challenged by filing an appeal which was not done so therefore the lower authority have rightly rejected their claim for notification by rectifying the bill of entry. He placed reliance on the following judgments:**

**(i) Neoteric Informatique Ltd. Vs. Asstt. Commr. of Cus. (Group5), Chennai 2015 (315) ELT 494 (Mad.) =2014-TIOL-1998-HC-MAD-CUS**

**(ii) CEAT Ltd. Vs. Commissioner of Customs, Kolkata 2016 (335 E.L.T. 693 (Tri.-Mumbai)**

**(iii) Commr. of Cus. (Imp.) Nhava Sheva Vs. Eurotex Indus & Exports Ltd. 2007 (216) ELT 137 (Tri.-LB) =2007-TIOL-1184-CESTAT-MUM**

**(iv) Priya Blue Industries Ltd. Vs. Commissioner of Customs (Preventive) 2004 (172) ELT 145 (S.C.) = 2004-TIOL-78-SC-CUS**

**(v) Collector of Central Excise, Kanpur Vs. Flock (India) Pvt. Ltd. 2000 (120) ELT 285 (S.C.) = 2002-TIOL-208-SC-CX**

**(vi) Commissioner of Customs (Appeals) Vs. ACE Designers Vs. 2015 (329) E.L.T. 109 (Mad.) = 2015-TIOL-1249-HC-MAD-CUS**

**(vii) Escorts Limited Vs. Union of India 1998 (97) E.L.T. 211 (S.C.) = 2002-TIOL-2706-SC-CX**

**4. We have carefully considered the submissions made by both the sides. We find that the present appeal is arising out of rejection of the application filed by the appellant under Section 149/154 for rectifying the bill of entry. The issue of rectification was only to allow the exemption Notification which could not be claimed in the bill of entry at the time of assessment. In the entire proceedings the Revenue is not disputing about the eligibility of the exemption notification. However the rectification of bill of entry was denied only on the ground that the assessment of bill of entry was not challenged. We do not agree with this contention of the Revenue for the reason that if there is no lis between the assessee and the department regarding eligibility of the exemption notification. The only option available is the rectification of bill of entry under Section 154. If the contention of the Revenue is accepted than for each and every error occurred in the bill of entry either by the assessee or by the department, the assessment is required to be challenged then the provision of Section 154 of Customs Act, 1962 will stand redundant which is not the intention of the law. The identical issue has come up before the Hon'ble Bombay Court judgement in the case of *Commissioner of Customs (Import) Vs. Indian Farmers Fertilizers Co-Operative Ltd. 2009 (243) ELT 687 (Bom)*. The assessee's application for recertification of bill of entry was validated. As regard the judgment cited by the Ld. AR in none of the judgments the identical facts is involved. As per our above discussion, the impugned order is set aside. The appeal is allowed.**

**(Pronounced in court on 18.5.2018)**