REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5282 OF 2004

M/S. IVRCL INFRASTRUCTURE & PROJECTS LTD. …APPELLANT

VERSUS

COMMISSIONER OF CUSTOMS, CHENNAI ...RESPONDENT

J U D G M E N T

R.F. Nariman, J.

1. The facts necessary to decide this appeal are as follows. The appellant entered into a Joint Venture Agreement with M/s Shapoorji Pallonji & Company Limited for the purpose of construction of roads in the State of Andhra Pradesh. The Joint Venture was awarded a contract by the National Highways Authority of

India for construction of roads as a part of the Golden Quadrilateral, Phase-2 Project in Andhra Pradesh.

2. *Vide* a notification dated 1.3.2001, in exercise of powers under Section 25(1) of the Customs Act, certain items were exempted from payment of customs duty and additional duty leviable under the Customs Tariff Act. We are concerned with serial No.217 of this notification which reads as follows:

"217.	84 or any other Chapter	Goods specified in List 11 required for construction of roads."	Nil Nil 38

The conditions by which the exemption is attracted is set out in item 38 as follows:

> "38. If, -
>
> (a) the goods are imported by –
>
> (i) the Ministry of Surface Transport, or
> (ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government or by a road construction corporation under the control of the

Government of a State or Union Territory; or

(iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department of a State Government or by a road construction corporation under the control of the Government of a State or Union Territory;

(b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from the date of their importation; and

(c) in case of goods of serial nos. 12 and 13 of List 11, the importer, at the time of importation of such goods, also produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, a certificate from an officer not below the rank of a Deputy Secretary to the Government of India in the Ministry of Surface Transport (Roads Wing), to the effect that the imported goods are required for construction of roads in India."

List 11 with which we are concerned contains several entries. We are concerned with Entry No.1 which reads as follows:

> "(1) Hot mix plant batch type with electronic controls and bag type filter arrangements more than 120 T/hour capacity."

A purchase order was placed by the appellant on M/s Lintec GmbH & Co.KG, Germany, for supply of a hot mix plant for a total value of 906,574 DM. Lintec and the appellant decided to split the purchase order between Lintec, Germany and M/s Marshalls, Chennai. Lintec was now to receive a total value of 585,700 DM and Marshalls was to receive the balance. Lintec was to supply the "critical items" required for the setting up of the said plant, whereas Marshalls was to supply various containers, frames, ducting, tanks and a thraw belt conveyer apart from agreeing to set up the plant after it is imported. *Vide* a Bill of Entry dated 28.12.2001, the import of equipment from M/s Lintec was made by the appellants, who claimed that the said items fell within the

scope of the exemption notification dated 1.3.2001 and, therefore, were exempt from payment of customs duty on the same. The Customs Authorities, however, maintained that what was imported was not a hot mix plant but only certain parts of such plant and, therefore, the exemption notification would not apply. Various representations were then made to the Chief Commissioner of Customs to allow the goods into India without payment of customs duty. On 22.2.2002 the goods were assessed provisionally and then allowed to be cleared. By an order of the same date, the Commissioner of Customs held that the exemption notification did not apply for two reasons. As per condition 38 of the said notification, imports have to be made by a Joint Venture Company and not by one of the partners of the said company. Secondly, the exemption applies to a complete plant that is imported and not to parts/components of such a plant. The Commissioner, therefore, held:-

> "14.2 Coming to the issue whether the goods imported are the complete plant or not, I find that M/s. IVRCL, placed an order for the

supply of the whole plant on M/s. Marshall – Lintec, Chennai, (a Joint Venture collaboration between M/s. Marshall & M/s. Lintec, Germany). M/s. Marshall – Lintec, Chennai, entered into an agreement with M/s. IVRCL, for the supply, erection and commissioning of the plant. Therefore, the order placed on M/s. Marshall – Lintec, Chennai, was terminated since the Joint Venture Company was not finally formed and separate orders were placed on M/s. Lintec, Germany, and M/s. Marshall. M/s. Lintec, Germany was to supply certain components and one part of the plant in a fully assembled container and M/s. Marshall were to manufacture the indigenous components and assemble the imported components and the indigenous components in the indigenously manufactured containers. Further, the scope of supply included testing, erection and commissioning of the plant by M/s. Marshall. The cost of the plant is divided in the ratio approximately 60:40 between the partners M/s. Lintec, Germany and M/s. Marshall.

14.3 Further the agreement includes the cost of transportation of the imported components to the factory of M/s. Marshall. As per their Technical Transfer Contract, M/s. Lintec supplied the drum assembly and the components for the manufacture of the plant by M/s. Marshall. No separate agreement had been entered either by the principal or the local representatives with the importer M/s. IVRCL. I find that the principal and the local representative of the supplier as per their discussion and communications with the importer, had arranged to raise the import documents by describing the goods as a complete plant though the goods supplied are

only the drum assembly and components. The examination of the imported goods confirmed that out of 11 segments of the whole plant to be supplied in a fully assembled condition to the importers, only one assembled segment viz. drum container covering the screening and drying drum had been supplied apart from the components in another commercial container.

14.4 I also find that Shri S. Ramachandran, Sr. Vice President of the importing firm has clearly admitted, in his voluntary statement dated 03.01.2002 that the goods imported were not a complete plant and once assembled with the indigenous components would form a complete plant. Though he claimed that he had given the statement dated 03.01.2002 under duress, in his subsequent statement given on 21.02.2002, he again admitted that imported goods were only components and they have not attained essential characteristics of a plant.

14.5 Further I find that Shri M.V. Narasimha Rao, Project Director of NHAI, with reference to the exemption certificate issued by them, after careful scrutiny of the related import documents and also the examination proceedings dated 24.01.2002, has clarified that the goods under import were not the complete plant and that the imported components did not have the essential characteristics of the plant.

14.6 Under Notification No.17/2001, that the benefit of duty exemption is available only for the import of the plant in full either in CKD or SKD condition. The subject import can be considered only as a part of the plant.

> Therefore, the goods under import are not eligible for the duty exemption as provided under the Notification No.17/2001."

3. An appeal was carried by the appellant to CESTAT which set aside the Commissioner's reasoning on condition 38 of the notification. It held that there was in fact no Joint Venture Company formed and the Joint Venture between the appellant and M/s Shapoorji Pallonji & Company Limited was in the nature of a partnership, in which case any of the partners could import goods covered by the exemption notification. However, it agreed with the Commissioner that what had in fact been imported was not a complete plant and, therefore, it would follow that the exemption notification would not be available on this score. CESTAT held:-

> "10. The next issue is whether the goods imported and cleared under the Bill of Entry filed by IVRCL were eligible for the benefit of exemption in terms of Sr. No.217 of the Table (read with Item No.(1) in List-11) annexed to the Notification. It is settled law that an exempting provision under a taxing statute requires to be construed strictly vide *Novopan India* (supra) wherein the apex Court held that

a person invoking an exempting provision to relieve him of tax liability must establish clearly that he is covered by the said provision and that, only in the case of doubt or ambiguity, the benefit thereof must go the State. If the goods in question satisfy the description given at Item No.(1) in List-11, it will be eligible for the exemption. The description reads : "*Hot mix plant batch type with electronic controls and bag type filter arrangement 160 tons per hour capacity."* The Revenue has argued that a complete hot mix plant was not imported and that only some components thereof were imported. The appellants have contended that, barring some steel structures, all the essential components of hot mix plant were imported in terms of purchase order placed on the German supplier. We have come across two purchase orders in the file, marked as Annexures-4 and 6 of the memorandum of appeal, both identically numbered and identically dated (No.11 dated 21.7.2001). The Annexure-4/purchase order shows an amount of DM 906,574 while Annexure-6/purchase order shows an amount of DM 550,000 as the total price of what is described as "hot mix plant (batch type) CSD 2500, CAP 160 tons per hour as per specifications enclosed". It has been claimed by the appellants that the amount shown in Annexure-6/purchase order is the final price as settled through negotiations with the German Supplier. We have already noted that both the purchase orders are identically numbered and identically dated. Any negotiation between IVRCL and the Germany supplier should have taken place on 21.7.2001 itself. No evidence of any such negotiation is available on record. We have also come across the work order

issued by IVRCL to M/s Marshall Sons & Co. (Mfg.) Ltd., Chennai. This work order gives the following description of work: “assembling of equipment supplied by Lintec vide P.O. No. SRP/CAP/11/2K1-02 dated 21.7.2001 and also supply and erection of own structures as mentioned in Annexure”. The total cost of work shown in the work order is DM 356,574. We note that the amount shown in Annexure-4/purchase order is the arithmetical sum of the amounts shown in Annexure-6/purchase order and Annexure-7/work order and, further, that the description of work allotted to Marshall includes supply and erection of structures, apart from assembling of the equipments supplied by Lintec. It is clear from these facts that some of the components viz. structures for the hot mix plant were supplied by Marshall, that the amount paid to them towards cost of such components and cost of assembling of Hot Mix Plant was DM 356,574, that the amount paid by IVRCL to Lintec for the components supplied by the latter was DM 550,000 and that the total cost of the hot mix plant as erected at the project site was DM 906,574. Lintec’s letter to IVRCL vide Annexure-5 itself had called upon the appellants to place the necessary order with Marshall for their share of the deal of setting up hot mix plant. Only 9 containers were listed in the first annexure to that letter, which represented the “Lintec scope of supply”. The second annexure to the letter, representing the “Marshall scope of supply”, mentioned 2 containerised items besides structural parts. The documentary evidence is squarely in support of the Commissioner’s finding that only some components of hot mix plant were imported from Germany by the appellant-company.

11. Coming to the oral evidence under Section 108 of the Customs Act, we note that it was stated by Sh. P.S. Banik of Marshall that they were the Indian agents of Lintec for sale of hot mix plants in India and that, as per orders received from IVRCL, they had provided bitumen tanks and storage silo (containers with internal fabrication) and other structural fabrications for the hot mix plant in question. He also stated that the plant consisted of 11 containerised sections, of which a few were provided by Marshall. Sh. J. Bhattacharjee of Marshall stated that the components manufactured indigenously were essential for the function of the plant. Sh. S. Ramachandran of IVRCL himself admitted that the plant was not complete without addition of the indigenous items. Shri M.V.N. Rao of NHAI stated, after examining the import documents, that the complete plant had not arrived and that the imported components did not have the essential characteristics of hot mix plant. All these statements – none of them retracted or controverted – coupled with the documentary evidence would prove beyond doubt that the goods imported by IVRCL did not represent anything with essential character of a hot mix plant, let alone a complete plant, to satisfy the description at Item No. (1) of List-11 under the Notification. Therefore, we are unable to accept the counsel's argument that the imported goods should be treated as 'hot mix plant unassembled.' What was exempted from import duty in terms of Sr. No.217 read with Item No.(1) of list 11 under the Notification was a complete hot mix plant fully described at the said Item No. (1) and not some components thereof. There can be no

doubt or ambiguity with regard to the description of goods at the said Item No. (1)."

4. Shri Lakshmikumaran, learned counsel who appeared on behalf of the appellant has argued that Rule 2(a) of the general rules for the interpretation of the schedule to the Customs Tariff Act would make it clear that so long as essentially the plant in question had been imported, merely because all items that go into the making of such plant were not imported would not matter. Further, it is clear that such imports can also be made in unassembled form. His further argument was that the plant as a whole had been imported and only structural work had to be done by Marshalls in India and, therefore, the benefit of the exemption notification would be available. Ms. Pinky Anand, learned Additional Solicitor General countered these submissions and argued that there are concurrent findings of fact by both the Commissioner and the CESTAT that what was in fact imported was not the complete plant and since that was so, the benefit of the exemption notification would not be

available. She further pointed out that there were various admissions made by the appellant as well as by persons who deposed on their behalf which would show that in any case even the essential portions of the plant had not been imported.

We have heard learned counsel for the parties. We find that the first argument made by Shri Lakshmikumaran can be disposed of immediately. The subject matter before us is an exemption notification issued under Section 25 of the Customs Act, 1962. The interpretative notes that have been referred to by Shri Lakshmikumaran are in the Customs Tariff Act. Note 2(a) referred to by Shri Lakshmikumaran reads as follows:

> "2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or dis-assembled."

It is clear that such note will have no application to an exemption notification which is issued under Section 25 of the Customs Act. Therefore, the fact that an unassembled plant which is incomplete but which has the essential character of a complete plant is not the test to be applied in the present case. On the other hand, the applicable test would be what has been laid down in a catena of decisions. Two such decisions will suffice. In **Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd.**, (2005) 13 SCC 789, this Court held:

> "34. The principles as regards construction of an exemption notification are no longer res integra; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning."

Similarly in **G.P. Ceramics Private Limited v. Commissioner, Trade Tax, Uttar Pradesh,** (2009) 2 SCC 90, this Court held:-

> "29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See *CTT* v. *DSM Group of Industries* [(2005) 1 SCC 657] (SCC para 26); *TISCO* v. *State of Jharkhand* [(2005) 4 SCC 272] (SCC paras 42 to 45); *State Level Committee* v. *Morgardshammar India Ltd.* [(1996) 1 SCC 108]; *Novopan India Ltd.* v.*CCE & Customs* [1994 Supp (3) SCC 606] ; *A.P. Steel Re-Rolling Mill Ltd.* v. *State of Kerala* [(2007) 2 SCC 725] and *Reiz Electrocontrols (P) Ltd.* v. *CCE* [(2006) 6 SCC 213].]"

Judged by this test, it is clear that a hot mix plant of the type mentioned alone is exempt from payment of customs duty. Obviously, what is meant is that such plant in its entirety must be imported albeit in an unassembled form. Judged by this test, it is clear that the concurrent findings of fact of the Commissioner and the CESTAT requires no interference by this Court inasmuch as both authorities

have held that a complete plant in an unassembled form has not in fact been imported. Further, both authorities have relied upon statements made by none other than the Vice President of the Appellant who after retracting a statement made on 3.1.2002 has made a subsequent statement on 21.2.2002 admitting that the imported goods were only components and had not attained the essential characteristics of a plant. The subsequent statement has not been retracted. Further, Shri P.S. Banik an employee of Marshalls also made a statement that the plant in its entirety consisted of 11 containerised sections of which a few were indigenously produced by Marshalls. Shri Bhattacharjee also an employee of Marshalls added that what was manufactured indigenously was essential for the functioning of the plant. Further, Shri M.V.N. Rao, of the National Highways Authority of India stated that a complete plant had not been imported and that the components of such plant which were imported did not have the essential characteristics of a hot mix plant.

5. It is settled law that statements made to an Officer of Customs are admissible in evidence under Section 108 of the Customs Act, 1962. This Court has held in **Gulam Hussain Shaikh Chougule** v. **S. Reynolds, Supdt. of Customs, Marmgoa,** (2002) 1 SCC 155, after quoting from several other judgments, that such statements are admissible in evidence. The Court has merely to scrutinize whether the admissions made were voluntarily or otherwise. In the present case, it is clear that unretracted statements made by none other than the Vice President of the appellant company, representatives of Marshalls, and a representative of National Highways Authority of India, having never been retracted later, were made voluntarily. Reliance on the said statements, therefore, by the authorities below cannot be said to be unwarranted in law.

Shri Lakshmikumaran in a written submission has accepted that statements given under Section 108 are admissible as evidence. However, he has cited a number of authorities to the effect that when such statements are

in direct conflict with documentary evidence, the latter should be given greater weight.

Thus, he relied upon a letter dated 18.1.2002 written by the Vice President of the appellant to the Chief Commissioner of Customs, Chennai and another letter dated 20.1.2002 by National Highways Authority of India to the Chief Commissioner of Customs, Chennai. A perusal of these letters would also show that what had to be manufactured in India would alone ultimately go to make up a complete plant. This is clear from a statement made in the letter dated 18.1.2002 to the following effect:

> "The above mentioned items shall be assembled in the indigenously procured steel structural container to make up the complete mixture container."

However, Shri Lakshmikumaran relied upon the following statements in the said letter:

> "We wish to mention at this stage that the steel structures which include containers, tank and storage silo are low technology fabrications and do not form essential components/ parts to the main Hot Mix Plant systems and import of such items from

> Foreign Country shall unnecessarily result in outflow of valuable foreign exchange for the country.
>
> We wish to reiterate that we have not compromised with regard to importing the major essential characteristics of the plant thereby keeping the character of the hot mix plant unchanged."

This, however, has to be read with the following statement made in the same letter.

> "We however strongly feel that our company has genuinely imported the basic character of the hot mix plant as explained in detail to the concerned officer of the SIIB and are eligible for availing duty exemption as per Notification No.17 of March, 2001 as originally filed in our Bill of Entry."

It is clear that on a holistic reading of the said letter what has been imported is "the basic character" of the hot mix plant and not a complete plant as it is clear that what is manufactured indigenously would alone ultimately complete the plant.

Equally the letter dated 20.1.2002 being a letter by the National Highways Authority of India does not take us much further. In fact, as has been pointed out above,

Shri M.V.N. Rao of the said authority candidly admitted that a complete plant had not been imported and that the imported components did not have the essential characteristics of the hot mix plant in question. In the present case, both the oral evidence and the documentary evidence ultimately lead to the same conclusion: namely, that what was imported was not a hot mix plant that was complete in itself.

6. It may be pointed out that CESTAT has already given the appellant considerable relief. The redemption fine of Rs.5,00,000/- imposed by the Commissioner was reduced to a fine of Rs.1,00,000/- and a penalty of Rs.1,00,000/- imposed by the appellant has also been set aside. In the circumstances, the appeal is dismissed with costs of Rs.1,00,000/-.

…..……J.
(A.K. Sikri)

…..……J.
(R.F. Nariman)

New Delhi;
April 15, 2015.