

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD**

REGIONAL BENCH : COURT NO – 3

Customs Appeal No. 474 of 2011-DB

(Arising out of OIA No.- 216-2011-CUS-COMMR-A—KDL dated 12.07.2011 passed by Commissioner of CUSTOMS-KANDLA)

Nayara Energy Ltd.

Appellant

P O Box No. 24,
P O Khambhalia,
JAMNAGAR
GUJARAT ,361305.

-VERSUS-

C.C. Kandla

Respondent

CUSTOM HOUSE,
NEAR BALAJI TEMPLE,
KANDALA
GUJARAT

Present For the Appellant: Shri Vipin K Jain, Shri Aqeel Sheerazi & Ms.
Dimple Gohil, Advocate

Present For the Respondent : Shri K.J. Kinariwala, Asst. Commissioner(AR)

CORAM:

HON'BLE MEMBER (JUDICIAL) , MR. RAMESH NAIR

HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/ 11702 / 2019

Date of Hearing: 06/08/2019

Date of Decision: 06/09 /2019

RAMESH NAIR

The brief facts of the case are that the appellants vide Bill of entry no. 005122 dated 12/10/2010 had imported a catalyst called "Petromax-MD" for use in the production of other final product manufactured in FCC unit of its refinery. They claimed benefit of concessional rate of duty available in Sr. No. 228 of notification 21/02-Cus dated 01/03/2002, available to all goods specified in entry no. 45 of List 17. The Adjudicating Authority denied the exemption on the ground that as per the entry of the notification, the goods specified in list 17 required for setting up of Crude Petroleum Refinery is only exempted, whereas the goods in question is a catalyst and the same is not required for setting up of petroleum refinery and the exemption notification is not applicable.

2. Shri Vipin Jain, Ld. Counsel appearing on behalf of the appellant, submits that during the relevant period its production capacity has enhanced from 10MMTPA to 16MMTPA and thereafter 220MMTPA. He submits that as law laid down by this Tribunal in the case of MRPL vs CC 2005 (187) ELT 466 (Tribunal) the benefit of

Sno. 228 of notification 21/2000-Cus would be available even during the phase where additional units were being installed in an existing refinery. The ratio laid down in the said judgment applies in all fours to the facts of the present case, as imports in the present case have been made while their refinery was installing units so as to increase its capacity from 10MMTPA to 16MMTPA and thereafter 220MMTPA. He further submits that as per notification 21/02 list no. 17, which contains various entries from Sno. 1-45, wherein the goods covered under S. no. 1-43 are required to set up for a crude oil refinery and item S. no. 44-45 and those which are required for running, repair and maintenance, both during and after the completion of setting up of the refinery. He submits that the goods imported by them is covered under Sno. 45. He submits that it is a settled law laid down in a catena of decisions that a notification should be read as a whole and the provisions of notifications must be harmonized in a way that no provision is rendered absurd or redundant. In this regard he placed reliance on the following decisions:

- (i) British Airways v/s Union of India 2002 (139) ELT 6 (SC)
- (ii) Raymond Ltd. v/s Union of India 2009 (240) ELT 180 (Bom.)
- (iii) Sultana Begum v/s Prem Chand (1977) 1 SCC 737.
- (iv) Madurai Power Corporation Pvt. Ltd. Dy. Commr. 2008 (229) ELT 521.

He also placed reliance on the Board's circular no. 354/34/2008-TRU dated 14/03/2008 which interprets the expression "required for setting up" as not confined to initial setting up, but also to cover pipes required for replacement of worn out/damaged pipes. He submits that identical entry of the notification has been considered by this Tribunal in the case of Reliance Industries v/s Commissioner of Customs 2012 (285) ELT 562 (Tri. - Ahd.) He submits that with this decision of the Tribunal the entire issue came to rest and now it is no more res integra. Further on the above, he submits that the catalysts namely "Petromax-HD", imported by the appellant was required for use in its crude oil refinery and is covered by Sno. 45 of List 17 of notification 21/02-Cus dated 01.03.2002 as the imported catalyst is consumable. He also placed reliance on the decision of this Tribunal in the case of Lanco Industries Ltd. vs Central Excise, Tirupathi 2010 (253) E.L.T 70 (Tri.- Bang.).

3. Shri K.J. Kinariwala, Ld. Asst. Commr. (AR) appearing on behalf of the Revenue, reiterates the findings of the impugned order. He further submits that the entry no. 45 of list 17 of Sno. 228 of notification no. 21/2002-Cus is unambiguous, according to which, only those goods are exempted which are used for setting up of "Crude Petroleum Refinery". It is beyond doubt that catalyst which is used for production of final products is not used for setting up of refinery. He further submits that even under the entry no. 45 only those goods which are used for running, repair or maintenance of the plant are covered. The catalyst imported by

the appellant is not used either for running, repair or maintenance of the plant. Therefore, on both the counts, the goods are not covered under the notification.

4. We have considered submissions made by both the sides and perused the records. We find that the appellant have claimed the exemptions under exemption of goods falling under entry no. 45 of List 17 of Sno. 228 of Notification no. 21/2002-Cus. dated 01.03.2002 which is reproduced below:

<i>Sr. No.</i>	<i>Chapter or Heading No. or sub-heading No.</i>	<i>Description of goods</i>	<i>Standard Rate</i>	<i>Additional Duty Rate</i>	<i>Condition No.</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>
228	84 or any other Chapter	Goods specified in list 17 required for setting up of Crude Petroleum Refinery	5%	10%	

List 17 (See S. no. 228 of the Table)

45. Sub-assemblies, tools, accessories, protective coating/paint materials, stores, spares, materials, supplies, consumables for running, repairing or maintenance of the goods specified in this List.

4.1 As per the plain reading of the above exemption entries, we find that there are criteria for the goods to be covered under this exemption notification:

- (1) The product should be used for setting up petroleum refinery.
- (2) The goods should be used for running, repair and maintenance of plant.

The goods imported is Petromax-HD which is a catalyst and the same is used in the manufacture of final product during the production process. Therefore, it is clear that the said good is not used for setting up of oil refinery. Ld. Counsel had heavily relied upon the case of Reliance Industries v/s CCE(supra). On going through the said judgment, we find that the case involved in the same case is mobile crawler cranes. From the nature of this goods, it is absolutely clear that mobile crawler cranes is used for carrying out Fluidized Catalytic Cracking Unit (FCC) in their refinery. However, in the said judgment, it was held that even if imported goods used after setting up of refinery, the same will be covered by the exemption notification under entry no. 45 of List 17 or S.no. 228 of notification no. 21/2002-Cus. In this judgment, decision was drawn from Board's circular no.

354/34/2008-TRU dated 14/03/2008. Wherein it was clarified that with reference to exemption granted to the goods used for setting of water treatment plant, even if the pipes are replaced after wear and tear, the same will also be exempted under the notification wherein the term "setting up" was used. As regard the issue that whether the goods are used for setting up of the refinery or thereafter, it was settled in the case of Reliance Industries (supra). However, now it is to be examined that whether the goods are covered under entry no 45 of List 17 in the notification. By reading of the entry, we find that it is a case of the appellant that the goods is used as consumable for running, repair or maintenance of the goods specified in list. We are of the view that the use of goods for running, repair or maintenance of the goods specified in the list denotes that the same should be used in the setting up for crude petroleum refinery whereas the product in question, i.e. "Petromax-MD" is not used for running, repair and maintenance of the plant. But it is used as input consumable in the production of final product. Therefore, in our view, the goods in question is not covered under entry no. 45 of List 17 of S. no. 228 of notification no. 21/2002-Cus. dated 01/03/2002. We are therefore, of the view that the lower authority has rightly denied the exemption. Hence, the impugned order is upheld. Appeal is dismissed.

(Pronounced in the open court on 06.09.2019)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member(Technical)