

M/S DHARTI DREDGING AND INFRASTRUCTURE LTD. A

v.

COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE,
GUNTUR

(Civil Appeal No. 3005 of 2010) B

MARCH 01, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

Customs Tariff Act, 1975 – Note 2 to Section XVII – Inapplicability of – Items excluded and denied the benefit of exemption notification, if integral parts of “Cutter Suction Dredger” – Appellant imported a Cutter Suction Dredger along with other accessories and equipments including Pipes, Anchor Boats, Multicats, Dredging pumping units, Engines and other spares and accessories classified under the Chapter Heading 8905 10 00 of the 1975 Act – Claimed benefit of nil rate of duty under the notification – Assistant Commissioner held that the multicats, pipes, imported dredging pumping units and other goods were classifiable under different tariff headings and thus, were not entitled to exemption under the notification as Dredgers – Appellate Commissioner dealt with each item separately and held that nine items were entitled to exemption – CESTAT restored the order of the Assistant Commissioner – On appeal, held: As per Note 2 of the Section XVII, parts and parts of accessories cannot apply to specified articles, including items classifiable under 8401-79, 8481-82, and to some extent, 8483 – The error committed by the CESTAT is that each of the excluded items was treated as a separate part and not integral to the functioning of a Cutter Dredger – Each of the units excluded by CESTAT are integral for the functioning of a Cutter Dredger – Without the compressors and the pipes necessary to pump the dredged material, the cutter dredger would cease to function as such – Other items are also integral parts of the Cutter Dredger, even though independently utilized for other purposes – The test is not whether multiple uses are possible but whether these parts are essential for the purpose of dredging in a Cutter Dredger – Thus, the revenue’s reliance on Note 2 of the Section XVII is insubstantial – Impugned order set aside – Order of Appellate Commissioner restored.

A *Steel Authority of India Ltd. vs. Commissioner, Central Excise & Customs, Bhubaneshwar* **2022 SCC Online (SC) 1232 – held inapplicable.**

Commissioner of Customs Vs. Boskalis Dredging India Pvt. Ltd. [2002 (139) ELT A 313 (SC); *Saraswati Sugar Mills vs. Commissioner of Central Excise* (2014) 15 SCC

B **625 : [2011] 13 SCR 579 – referred to.**

Boskalis Dredging India Pvt. Ltd. Vs Commissioner of Customs, Bhubaneshwar, [2001 (135) E.L.T. 1396 – referred to.

C Case Law Reference

[2011] 13 SCR 579	referred to	Para 6
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CIVIL APPELLATE JURISDICTION : Civil Appeal No.3005 of 2010.

D From the Judgment and Order dated 28.05.2009 of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore in Appeal No.C/690/2008.

Kumar Visalaksh, Udit Jain, Ajitesh Dayal Singh, Abhay Chattopadhyay, Praveen Kumar, Advs. for the Appellant.

E N. Venkataraman, A.S.G., Mukesh Kumar Maroria, V. C. Bharathi, S. A. Haseeb, Ms. Alka Agarwal, Ms. Ruchi Gour Narula, Syed Abdul Haseeb, Advs. for the Respondent.

The Judgment of the Court was delivered by

F **S. RAVINDRA BHAT, J.**

1. The appellant had imported a “Cutter Suction Dredger” along with other accessories and equipments including Pipes, Anchor Boats, Multicats, Dredging pumping units, Engines and other spares and accessories. These were classified under the Chapter Heading 8905 10

G 00 of the Customs Tariff Act, 1975 (hereinafter “*the Act*”). The appellant claimed the benefit of Nil rate of duty, in terms of Notification No. 21/ 2002- CUS dated 01.03.2002. The appellant had relied upon a certificate dated 27.02.2008 issued by the Chartered Engineer, based on the inspection of the goods. After verification of the Bill of Entry, the Assistant Commissioner was of the opinion that the multicats, M.S. pipes, imported

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dredging pumping units and other goods were classifiable under different tariff headings and were not entitled to exemption under the notification as “*DREDGERS*”.

2. Feeling aggrieved, the assessee appellant preferred an appeal to the Commissioner of Customs (Appeals), Guntur (hereinafter “the *Appellate Commissioner*”). The Appellate Commissioner, by an order dated 30.06.2008, after elaborately analysing the functions of each individual part, granted relief and held that nine items were entitled to exemption. These were set out in paragraph 25 of the Appellate Commissioner’s order, which is extracted for easy reference:

SL. NO.	DESCRIPTION OF THE GOODS	SL. NO. OF ANNEXURE TO THE BILL OF ENTRY NO. 012/2007-08 dt. 22.02.08
1.	Dredger Pumping units along with Engines and accessories with two spare engines spare pump casing, spare impeller and necessary accessories	1
2.	Floating pipes/hoses 12 Mts length 750 MM Dia	2
3.	Air Compressors 5 HP	3
4.	Air Compressors 7.5 HP	4
5.	Steel Angles Plates	14
6.	Pipes	15
7.	Pumps	16
8.	Wire Mesh	18
9.	Outward Engine Boat	24

3. The Appellate Commissioner had while granting relief, relied upon the previous order of the CESTAT reported as *Boskalis Dredging India Pvt. Ltd. Vs Commissioner of Customs, Bhubaneshwar*, [2001 (135) E.L.T. 1396] (“hereinafter as “*Boskalis Dredging India Pvt. Ltd*”).

4. The revenue appealed to the CESTAT. The CESTAT relied upon other previous decisions and took into consideration Chapter Note to Section XVII of the Act which states that ‘parts’ and ‘parts of accessories’, could not apply to certain articles, whether or not they are identifiable, as far as the goods of that section were concerned. Note 2(e) was interpreted to hold that the parts – which the Appellate Commissioner held were essential to a Cutter Dredger, were separate articles. CESTAT upset the findings of the Appellate Commissioner and restored the order of the Assistant Commissioner.

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- A 5. The appellant urges that the impugned order wrongly interfered with the Appellate Commissioner's determination. It was submitted that each article, that were denied the benefit of exemption, performed functions integrally connected with a Cutter Dredger. Learned counsel relied upon the decision in *Commissioner of Customs Vs. Boskalis Dredging India Pvt. Ltd.* [2002 (139) ELT A 313 (SC)] by which this Court affirmed the CEGAT's order in *Boskalis Dredging India Pvt. Ltd. (Supra)*.
- B 6. Learned counsel for the revenue relied upon the decision of this Court in *Steel Authority of India Ltd. vs. Commissioner, Central Excise & Customs, Bhubaneshwar* [2022 SCC Online (SC) 1232]. In that decision, this Court had to deal with the question as to whether transportation of hot coke from a coke oven battery with the aid of a guide car resulted in transport vehicle i.e., the guide car being an integral part of the coke oven battery. The Court on that occasion had relied upon previous rulings in *Saraswati Sugar Mills vs. Commissioner of Central Excise*, (2014) 15 SCC 625). In *Saraswati Sugar Mills (supra)*, the Court had the occasion to deal with what constitutes the word "COMPONENT".
- C 7. This Court after relying upon *Saraswati Sugar Mills (Supra)* and taking aid from the dictionaries held that the Guide Car could not be said to be a component of the Coke Oven Battery. It was submitted that by the same analogy, the pumping units, air compressors, pumps, pipes, wire mesh, steel angle plates and outward engine boat, all of which were granted the benefit of exemption notification, cannot be considered 'components'. It was besides urged that the Appellate Commissioner had disregarded Note 2 to Section XVII of the Act which had clearly excluded the articles in question; they had to be classified separately under the relevant heads.
- D 8. The order of the Tribunal in *Boskalis Dredging India Pvt. Ltd. (Supra)* dealt with a similar aspect; the article imported which was in question in that case was a cutter suction dredger, much like the same one in the present case. The Tribunal had after considering the various components and the relative functions, described their utility in the overall unit in the following terms:
- E "From the definitions of various Dredgers as extracted above, we find that Dredging, no doubt, means excavation. But there is definitely a need for continuous lifting of the

*dredged material and dumping the same at some other place. A
This can be done by a separate disposal system of discharge
system can be a part of the Dredger by itself. Referring to the
British Standard Specification (BS 6349, Part- 5 L 199) we
find that there are various types of Dredgers like Stationary
Suction Hopper Dredger, Trailing Suction Hopper Dredger,
Cutter Suction Dredger etc. The Dredger in the instant case
is a Cutter Suction Dredger in contrast to the Hopper Dredger
which keeps the dredged material in its hold (hopper). When
the hold is filled up, the said Hopper Dredger moves to the
designated area of discharging dredged materials without the
assistance of any pipelines. In such type of Hopper Dredgers,
neither the Suction Pipe nor the discharge Pipe may be
essential. In the case of Cutter Suction Dredger, the procedure
for carrying out the dredging work is different. The Cutter-
Head is fitted with the Dredger with a Suction Pipe beneath
it. The said Cutter cuts the earth, rock etc. under the water
when the dredged material accumulates. As these dredged
material has to be taken form the Dredger for the continuous
uninterrupted dredging work, Suction Pipe sucks the dredged
material. The Suction Pipes are connected with the discharge
pipe with the aid of flanges/belts, nuts and bolts etc. The
discharge pipes then throw these dredged material at the
designated area which may be at a distant place. It is this
function of the Cutter Suction Dredger which involves the
dredging as well as the discharging, which makes the Pipelines
an essential part of the Dredger inasmuch as without these
Pipelines the Dredger of the type in question will not be able
to work properly, Para 4.4.1 of the British Standard
Specification is being reproduced below for better
appreciation:-*

“4.4.1 General”

*..... A Cutter Suction Dredger may be self-propelled G
but is more commonly dumb (non-self-propelled). Dredging
only takes place with the dredger moored in some way and it
involves an initial powerful cutting action with suction and
pumped discharge to barges or more commonly, via a pipeline
to a remote onshore area for disposal of land reclamation.*

- A *The Cutter Suction Dredger is normally rated according to either the diameter of the discharge pipe, which may range from 150 mm to 1100 mm, or by the cutter head driving horsepower, which may range from 20 to 5000, or in the case of very large dredgers by the total installed horsepower.....*
- B *The main pontoon structure contains the dredge pump(s), the main engines and all ancillary engines, drives and equipment.....*
- C *The discharge from the dredge pump(s) passes over the stern (or opposite end the cutter) of the pontoon to a heavy hose or flexible coupling, to which is connected a floating pipeline (see A. 4.5.3) which in turn is connected to an onshore pipeline. Sometime an intermediate sea bed pipeline may be used.” Para 4.4.2 of the British Standard Specification is also being reproduced below for better appreciation.*
- D “4.4.2. Pipelines
- E *Pipelines affect both the performance and operational efficiency of the Cutter Suction Dredger. The diameter of the pipeline has a direct bearing on the efficiency of the hydro transport process. Pipelines fall into the following two categories.”*
- F *11. From the above description of the Cutter Suction Dredger also, we find that Pipelines attached with the Suction Dredger forms an indispensable part of the main mother craft. The cutter head, which may be electrically or hydraulically driven, encloses the suction intake of a centrifugal dredge pump. The cutterhead is mounted at the extremity of a fabricated steel structure, termed the “ladder”, which also supports the suction pipe. The technical and practical requirement of disposal of the dredged material makes the Pipelines a part of the main Dredger. We find that the evidence relied upon by the appellant firm in the shape of the British Standard Specification, strongly favour their case. Accordingly, we hold that the various types of Pipelines are a part of the Dredger itself, qualifying for their classification under Chapter 8905.00 as Dredgers and therefore, they are entitled to the exemption Notification No. 133/87-Cus., dated 19.3.87. As*
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we have held Pipelines as a part of the Dredger enjoying exemption under Notification No. 133/87, the appellants further claim of exemption under Notification No. 106/92 dated 1.3.92, in the alternative, does not required any consideration. The appeal is thus allowed.

9. The Bill of Entry in the present case, describes the goods as “Cutter Suction Dredgers and Ta Hsing along with Standard Spares, Accessories, Pipes etc., including Multicats (2 Nos.) & Anchor Boat (1 No.); Dredging Pumping unit to be used with cutter suction dredger (2 Nos.) Engine (2 Nos.) along with Standard Spares & Accessories.” In the order and appeal, the relevant portion of the inspection report of the Chartered Engineer was taken note of.

It is extracted below:

The main function of the dredger is to remove the sand, slurry etc., from the sea bed to increase the depth. There are various types of dredgers like cutter suction (without propulsion), trailer suction with self propulsion, back hoe dredger etc. The selection of dredger and allied accessories like anchor boat and other dredge spread depends upon the area of operation.

Since the dredger under import is a cutter suction dredger without propulsion the anchor handling Multi cat boats and other boats to carry out survey, to take sounding at the dredged area and for transporting men and material from the shore to the dredger.

The dredger requires continuous maintenance which involves flushing the pipe lines, filters with compressed air and welding, gas cutting of various parts and also machining of some vital components for the day to day operation is essential.

Since most of the project site will not have a permanent power connection, hence the generators are deployed for providing power to the shore support work shop wherein welding, machining and illumination of the site and etc.,

The pumping stations are basically engine, driven centrifugal pumps which are used as a booster pumps to pump the slurries/sludge to a place away from the site.

- A *Hence, the complete dredge spread which involves various boats, and other machineries and equipments has to be decided based on the location and type of the job involved.”*
- B 10. The Appellate Commissioner then considered the previous order in *Boskalis Dredging India Pvt. Ltd. (Supra)* and dealt with each item separately. It was noticed that the dredger pumping units are essential for the cutter suction dredgers unlike in the case of hopper dredgers. Furthermore, the use of air compressors is also necessary to ensure a continuous supply of air to the booster pumps. The Appellate Commissioner took care to exclude some of the claims made by the appellant towards generators, consumables lathe etc. Likewise, the Appellate Commissioner allowed the claim for exemption in respect of steel angle plates, pipes, and wire mesh which was held to be useful for the erection of booster pump stations.
- C 11. Note 2 of the Section XVII which has been relied upon in the present case by the revenue and the tribunal, is to the following effect:
- “The expression “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as far the goods of this Section: -*
- D E (a) to (d).....
- (e) *machines or apparatus of headings 8401 to 8479, or parts thereof; articles of heading 8481 to 8482, or, provided they constitute integral parts of engines or motors, articles of heading 8483.”*
- E F 12. A plain reading of the note extracted above shows that parts and parts of accessories cannot apply to specified articles, including items classifiable under 8401-79, 8481-82, and to some extent, 8483. In the present case, in this Court’s view, the error committed by the CESTAT is that each of the excluded items has been treated as a separate part and not integral to the functioning of a Cutter Dredger. Without the compressors and the pipes necessary to pump the dredged material, the cutter dredger would cease to function as such. The other items, likewise, are integral parts of the Cutter Dredger, even though they might independently be utilized, for other purposes. The test is not whether multiple uses are possible but whether these parts are essential for the
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purpose of dredging in a Cutter Dredger. So viewed, the revenue's A
reliance on Note 2 in the present case is insubstantial.

13. As far as the reliance upon the judgement in *Steel Authority of India Ltd. (Supra)* is concerned, the Court undoubtedly held that the Guide Cars could not be treated as part of the Coke Oven Plant. Apart from making general observations with respect to Guide Cars being not essential for the functioning of the Coke Oven Battery, what are the other essential functions of the coke oven battery and whether the guide car is an integral part of that, was an aspect which the Court went into. In the opinion of this Court, that decision cannot provide guidance in resolving the classification dispute posed in this case i.e., whether the items excluded and denied the benefit of exemption notification are integral parts of a Cutter Dredger. As held earlier, each of the units which the CESTAT excluded (to which benefit had been granted by the Appellate Commissioner) are integral for the functioning of a Cutter Dredger. For this reason, it is held that the ratio of the judgement in *Steel Authority of India Ltd. (Supra)* could not be applicable in the present case. B

14. As far as the exclusion of generators is concerned, this Court notices that concurrently the order in appeal, as well as the order of the CESTAT, have excluded it from the benefit of the exemption notification. The Court finds no reason to interfere with those findings. C

15. For the above reasons, the impugned order is hereby set aside. The order of the Appellate Commissioner is accordingly restored. The appeal is allowed in these terms without order on costs. D

16. Hence, the Civil Appeal is allowed in part. Pending application(s), if any, is/are disposed of. E F

Divya Pandey

(Assisted by : Anirudh Agarwal and Shevali Monga, LCRAs)

Appeal partly allowed.