

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench AHMEDABAD

COURT NO. I

Appeal No. C/11445-11446/2018-DB
[Application No. C/EH/10567/2018]

[Arising out of Order-in-Original No OIO-JAM-CUSTOM-PRV-COM-007-17-18 dated 07.03.2018 passed by Commissioner of Customs, Jamnagar]

M/s. National Marine & Infrastructure India Pvt. Limited : **Appellant**
Shri Nicholas Charles D'Souza

vs.

Commissioner of Customs (Preventive) Jamnagar : **Respondent**

Appearance:

Shri K.B. Menon and Shri Anil Kumar Mishra, Advocates for the Appellant
Shri Jeetesh Nagori, Additional Commissioner (AR) for the Respondent

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing : 06.08.2018

Date of Decision : 02.11.2018

Final Order No. A/12545-12546 / 2018

Per : Ramesh Nair

The brief facts of the case are that the appellant/importer had executed a Work Contract with M/s. Swan LNG Pvt. Limited for carrying out dredging and reclamation in sea coast , near Jafrabad, Pipavav. They had imported three old and used Dredgers, one Barge, two self propelled Multicat along with accessories, pipelines and pontoons required for

dredging operation at Pipavav Port in the month of January 2017 as detailed below:

Sr. No.	Bill of Entry No.	Date	Description of goods
1	8142628	10.01.2017	Al-Mirfa, Kattouf Dredger & Belyryar, Multicat
2	8145408	10.01.2017	Embarka-5 Dredger, M6 Multicat
3	8134925	10.01.2017	Barge Fidelia
4	8141458	10.01.2017	Crawler Crane

Further, in the month of February 2017, they imported "Old and Used Pipelines, pontoons etc." declaring the same to be integral part of the dredgers already imported by them in January 2017, the details are as under:-

Sr. No.	BE No. & Date	Declared description of the goods	Declared CTH
1	8465433/ 07.02.2017	Old & used pontoons, Integral Parts of Dredger "Al Mirfa, Kattouf and Embarka-5"	89011090
2	8465442/ 07.02.2017	Old & Used various types of Pipe Lines, Elbow, Fittings & Equipments, Integral parts of Dredger "Al Mirfa, Kattouf and Embarka-5"	89051000

The appellant declared the goods of both the above bills of entry under CTH 89011010 and 89051000 respectively. In the bills of entry, they claimed exemption Notification No. 12/2012-Cus dated 17.03.2012. After detailed investigation, a show cause notice was issued wherein it was alleged that the appellant imported and cleared "complete dredgers,

pipelines, pontoons and other equipment and accessories” vide bills of entry No. 8142628 and 8145408 both dated 10.01.2017. Thereafter, they have imported “Old and used Pontoons and Pipelines” valued at Rs. 29,50,78,835/- through Pipavav Port under bills of entry No. 8465433 and 8465442 both dated 07.02.2017. It is the contention in the show cause notice that goods imported under both the said bills of entry dated 07.02.2017 were imported separately, the same cannot be a part of accessories of a complete Dredger already imported with Pipelines, Pontoons and other accessories vide bills of entry 10.01.2017. Therefore, the goods imported under bills of entry dated 07.02.2017 are classifiable under respective head of the goods i.e. 89079000 and 73049000/85015390 of the Customs Tariff Act, 1975. Accordingly, the appellant is not entitled for the exemption Notification No. 12/2012-Cus dated 01.03.2012. Consequently, differential customs duty was proposed to be demanded and penalty under Section 114A was proposed to be imposed. It was also proposed to confiscate the imported goods under bills of entry 07.02.2017. A penalty was also proposed under Section 112 read with Section 114AA of the Customs Act, 1962, upon Shri Nicholas Charles D’Souza, Logistic Manager of the importer. After considering the defense made by the appellant in reply to show cause notice as well as during personal hearing, the Adjudicating Authority passed the impugned order wherein following order was passed:-

ORDER

(I) I hereby reject M/s. National Marine and Infrastructure India Pvt. Limited Mumbai declared classification of the imported goods under CTH 89011090 and declared as "Old & Used pontoons, integral parts of the dredgers Al Mirfa, Kattouf and Embarka-5 in the Bill of Entry No 8465433 dated 07.02.2017 and order reclassification of the same under CTH 8900.

(ii) I hereby reject M/s. National Marine and Infrastructure India Pvt. Limited, Mumbai declared classification of the imported goods classified under CTH 89051000 and declared as 'Old & Used various types of pipelines, elbow, fittings & equipments, integral parts of the dredgers Al- Mirfa, Kattouf and Embarka - 5" in the Bill of Entry No. 8465442 dated 07.02.2017 and order reclassification of the pipes, pipe fittings like elbow, water box, Y-piece, shore connection, gate valves etc., cutter heads, cutter motors and side winch motor are falling under CTH 73049000, 73072900, 73269080, 85015390 of Customs Tariff Act, 1975 respectively as proposed in show cause notice.

(iii) I confirm the demand of differential duty amounting to Rs.8,68,74,159/- (Rupees Eight Crore Sixty Eight Lakh Seventy Four Thousand One, Hundred Fifty Nine only) under Section 28(4) of the Customs Act, 1962 along with appropriate interest in terms of section 28AA of the Act and order for recovery of the same from M/s. National Marine and infrastructure India Pvt. Limited, 404, 4th Floor, Centre Point, Andheri Kurla, JB Nagar, Andheri East, Mumbai-400059.

(iv) I order to appropriate the duty of Rs.8,68,74,159/- (Rupees Eight Crore Sixty Eight Lakh Seventy Four Thousand One Hundred Fifty Nine only)

And interest Rs. 18,85,051/- (Rupees Eighteen Lakh Eighty five Thousand Fifty One only) already paid by M/s. National Marine and Infrastructure India Pvt. Limited, Mumbai against the said amount of duty and interest as confirmed at Sr. No.(iii) above, by vacating the protest.

(v) I order to confiscate the impugned goods found to be wrongly classified and cleared under CTH 89011090 and 89051000 vide Bills of Entry Nos. 8465433 and 8465442, both dated 07.02.2017 valued at Rs. 29,50,78,835/- (Rupees Twenty Nine Crore Fifty Lakh Seventy

Eight Thousand Eight Hundred Thirty Five only), under Section 111(m) of the Customs Act, 1962. However, I give an option to M/s. National Marine and Infrastructure India Pvt. Limited, Mumbai to redeem the said seized goods on payment of redemption fine amounting to Rs. 2,95,00,000/- (Rupees Two Crore Ninety Five Lakh only) under Section 125(I) of the Customs Act, 1962.

(vi) I impose penalty equivalent to duty of Rs. 8,68,74,159/- (Rupees Eight Crore Sixty Eight Lakh Seventy Four Thousand One Hundred Fifty Nine only) and interest as confirmed at Sr. No. (iii) as above, on M/s. National Marine and Infrastructure India Pvt. Limited, Mumbai under Section 114A of the Customs Act, 1962. However, if the amount of duty along with interest confirmed above is paid within 30 days from the receipt of this order, the amount of penalty imposed shall stand reduced to 25%, provided the reduced penalty is also paid within the said period of 30 days; and

(vii) I impose penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on Shri Nicholas Charles D'Souza, Logistic Manager of M/s. National Marine and Infrastructure India Pvt. Limited, Mumbai under Section 112 read with Section 114AA of the Customs Act, 1962.

Being aggrieved by the aforesaid order-in-original the present appeal is filed by the appellant.

2. Shri Anil Mishra, Id. Counsel along with Shri K.B. Menon, Id. Advocate appeared on behalf of the appellants. He submits that the Adjudicating Authority has decided the classification solely based upon the Explanatory Notes of HSN and explanatory notes are not a part of Indian Customs Tariff Act. In entirety it is a guiding force however, additional guidance would be required with the HSN Explanatory Notes and it itself is not sufficient to decide the matter of classification. He submits that merely because some

part of the Dredgers were imported subsequent to the import of three Dredgers with accessories, the classification on that basis cannot be different from the admitted classification of the same goods imported with Dredgers. He submits that similar items which are parts of dredger and imported along with Dredger were admittedly classified under the head of dredger as accessories. Therefore the same items imported for the same purpose, cannot have a different classification. He referred to Note of Section XVII of first Schedule to Customs Tariff Act and submits that the said Section excludes certain goods from the whole of the Section of the schedule. The subject goods are not covered under any exclusive clause of the said note. He referred to British Standard, Part V in respect of CSD Dredgers and according to which a cutting suction dredgers is desired in four parts i.e. (i) Main Platform, (ii) Pipeline, (iii) Anchors and (iv) Cutter Heads. According to this standard, cutting suction is essential part of the complete cutter suction dredger. He submits that the pipelines, pontoons and equipment imported along with dredgers and additional same goods imported subsequently, are of the same nature and to put together for carrying out the contract. Therefore, there is no difference between the pipelines, pontoons, equipments imported along with dredgers and a part was imported subsequently but for the same Works Contract. He submits that Adjudicating Authority has heavily relied upon the statement of Technical Superintendent recorded under Section 108 of the Customs Act,

who merely stated that dredgers imported in the first consignment are complete dredgers and the dredging work commenced on 15.01.2017 and 05.02.2017 even before arrival of second consignment. He submits that even though with the first consignment, the dredging work was commenced but it could be completed only with arrival of second consignment and use thereof. Therefore, the entire work cannot be divided and on that basis, the same goods used for the same purpose, cannot be given a different classification. He referred to Rule 2 of General Rules of Interpretation to the Customs Tariff Act, 1975 and submits that Rule 2(a) is adequate to cover the issue as disassembled or unassembled components of dredger as explained in CSD dredger's standards in BS 6349 that all such four components combined in disassembled condition will have an essential character of dredger for dredging. Therefore, the goods in question being an essential part becomes an essential characteristic of complete dredging could be classifiable under the head Dredger under Customs Tariff head 8905. He submits that Note 2 of Section XVII is not applicable in the case of Dredgers when such articles are imported in parts of a complete machine. He submits that the Adjudicating Authority has failed to consider and follow the judgment in the case of *Boskalis Dredging India Pvt. Limited vs. Commissioner of Customs, Bhubneswar – 2001 (135) ELT 1396 (Tri. Kol.)* wherein an identical issue was involved and the Tribunal in respect of parts of Dredging held the classification under CTH 8905.10 as Dredging on the

basis of use of the material for operation of dredging. The said decision of the Tribunal was upheld by the Hon'ble Supreme Court reported at 2002 (139) ELT A313 (SC). He submits that as per the contract, the appellant was required to import three CSD dredgers complete in every respect to execute the work awarded under the contract and accordingly various essential equipments like pipes, elbows, pontoons etc. were required to complete the work. The goods imported with three CSD dredgers together are some additional parts imported subsequently and all put together to use for execution of the project without which the operation of dredging to complete the work was not possible. Therefore, three CSD dredgers which are complete not only with the parts imported along with but with subsequent imports. Therefore, for the purpose of classification, both the consignments cannot be treated differently.

2.1 Ld. Counsel further submitted that the contention of the Revenue that second consignment has been invoiced separately as well as it does not constitute integral part of the three dredgers, is totally incorrect, in view of the fact that any consignment is disassembled into parts for the purpose of import then separate invoicing is done as per international shipping documents requirement and is done accordingly. He submits that pipes, elbows, fittings and pontoons imported in the second consignment clearly mentioned that the same constitute integral equipments of three dredgers

already imported. Therefore, there should not be any doubt that the second consignment consisting of pipes, pontoons were essential part and parcel of the first consignment. He submits that the Adjudicating Authority has failed to refer the contract and the connected drawings and designs to carry out the project and requirement of dredgers which are only complete when they dump the dredging waste at the designated area. He submits that at the time of filing of bill of entry No. 8465433 dated 07.02.2017, the appellant have declared the goods under CTH 89011090 as old and used pontoons, integral parts of dredger Al-Mirfa, Kattouf and Embarka-5 as per packing list. Similarly, while filing the bill of entry No. 8465442 dated 07.02.2017, they have declared the goods under CTH 89051000 as old and used types of Pipelines, Elbows, Fittings and Equipment integral parts of dredger pontoons integral parts of dredger Al Mirfa, Kattouf and Embarka 5 of dredging operation. Therefore, there was a clear understanding even though certain goods imported subsequently but the same are part and parcel of three dredgers imported earlier and all together were used for the same project. He further submitted that in the present transaction, there is no sale involved and the goods imported were to be re-exported after completion of the project. For this reason also, the composite goods i.e. dredgers along with accessories cannot be divided under different classifications. As regards interpretation of Application of Accessories (Condition) Rules, 1963, he submits that the Adjudicating Authority

contends that the pipelines, elbow, fittings and pontoons imported under both the bills of entry dated 07.02.2017 cannot be treated as integral parts of accessories and equipment of dredgers inasmuch as the project work was already commenced prior to arrival of these pipelines, elbow, fittings and pontoons. The Adjudicating Authority has wrongly construed the words 'along with' as 'together' and held that it is only those spares and accessories which are brought along with i.e. together with the main article are entitled to exemption under Accessories (Condition) Rules, 1963. He submits that in terms of these Rules, accessories and spare parts and any article when imported along with that article shall be chargeable at the same rate of duty as that article if the appropriate officer is satisfied that in the ordinary course of trade such accessories, parts and components are compulsorily supplied along with that article and no separate charge is made for such supply and their prices are included in the price of the article. In the present case also, the second consignment, though supplied subsequently but it is for the use along with three dredgers and no separate charge was made as the supply is for the completion of the project and not for sale of goods as such. He submits that the word 'along with' does not mean 'together-with' in the sense as sought to be construed by the Revenue. He submits that in the case of dredgers, it is not possible to transport the entire dredger in one consignment and therefore, it has to be

transported in dissembled condition. Only due to this reason, the Accessories (Condition) Rules, 1963 cannot become inapplicable.

2.2 Ld. Counsel further submits that it is not a case that dredger and pontoons, pipes and equipments imported together were only sufficient to carryout the dredging activity. The dredger Kattouf began on 25.01.2017 and dredger Al Mirfa began dredging on 06.02.2017. The pipelines and pontoons imported with dredgers were used to start the work but for completion second consignment was imported and the goods were imported with dredger or imported in second consignment were together used for the same dredging activity. Therefore, the provisions of Accessories (Condition) Rules, 1963 stands complied with. He submits that the Adjudicating Authority has wrongly contended that the clearance of impugned goods were made under risk management system purely based on self-assessment and self declaration is absolutely incorrect for the reason that jurisdictional Customs officer, Pipavav Port has in respect of both the bills of entry dated 07.02.2017 have examined the goods and verified the same to fall under CTH 8901 and 8905 respectively, in terms of Mandatory Compliance requirement in the examination order, after due examination of the same and fully satisfying that the goods have been correctly classified, the out of charge of the consignment was issued by the jurisdictional Customs authorities. Accordingly, the appellants classification is correct and

proper. In support of the above, he placed reliance on the following judgments:-

(a) Dredging Corporation of India Limited vs. CC, Calcutta – 2001 (9) TMI 187 CEGAT, Kolkata

(b) Dredging Corporation of India Limited vs. CC, Vizag – 2000 (6) TMI 509 – CEGAT, Chennai

(c) UOI vs. Kamlakshi Finance Corporation Limited – 1991 (9) TMI 72 – Supreme Court of India

In view of the above judgments and judgment in the case of *Boskalis Dredging India Pvt. Limited (supra)*. The Adjudicating Authority following the judicial discipline should have dropped the proceedings. Accordingly, he has not followed the judicial discipline. He further submits that since there is no malafide intention or mis-statement of the facts, the only issue involved is interpretation of law of classification, in the absence of any suppression of facts, penal provision is not invocable. The contention of the Adjudicating Authority that imported goods were mis-declared in order to wrongly avail the benefit of Notification No. 12/2012-Cus dated 01.03.2012, he submits that the correct description was detailed in the bills of entry and it was also stated that these are the parts of three dredgers which were already imported. Therefore, it cannot be said that appellant have mis-declared the goods with intention to wrongly avail the benefit of Notification No.

12/2012-Cus dated 01.03.2012. On the issue of imposition of penalties, he placed reliance on the following judgments :-

(a) Northern Plastics Limited vs. CC & CCE – 1998 (7) TMI 91 (SCI)

(b) Jay Agro Organics Limited vs. CC, Ahmedabad – 2015 (7) TMI 179 – CESTAT Ahmedabad

(c) CC vs. Gaurav Enterprises – 2005 (9) TMI 99 – High Court Bombay

3. As regards confiscation of the goods, he submits that since, the appellant have correctly declared the description of the goods imported, the good are not liable for confiscation. He placed reliance on the decision of this Tribunal in the case of *PSL Limited & Ors vs. CC, Kandla – 2014 (5) TMI 789-CESTAT Ahmedabad*. Based on the above submissions, he prays to set-aside the impugned order and allow the appeals.

4. Shri Jeetesh Nagori, Id. Additional Commissioner (AR) appearing on behalf of the Revenue reiterated the findings of the impugned order. He submits that in the present case, it is not disputed that pontoons, pipes and other parts in question were not presented together with the dredgers for assessment. The said goods were imported separately therefore, it is excluded from Chapter 89 and the same are correctly classifiable under respective headings. He referred to Accessories (Condition) Rules, 1963 and submits that the claim of the appellant that

the goods are accessories parts of dredger, is not acceptable for the reason that as per the said Rules, accessories parts should be supplied along with that article and no separate charge is made for such supplies, their price being included in the price of the article. For this reason also, the goods in question cannot be treated as accessories and spare parts. In support of his submission, he placed reliance on the following judgments:-

(a) Siemens Limited vs. CC, New Delhi – 1998 (89) ELT 684 (Tri.)

(b) Lakshmi Machine Works Limited vs. CC, Chennai – 2006 (206) ELT 560 (Tri. Chennai)

(c) CCE, Guntur vs. Dharti Dredging & Infrastructure Limited – 2010 (249) ELT 54 (Tri. Bang.)

(d) CC, Tuticorn vs. Jan De Nul NV – 2003 (161) ELT 642 (Tri. Chennai).

5. We have carefully considered the submissions made by both sides and perused the record. From the undisputed facts of the case, we observed that the goods i.e. pontoons, pipes and other parts were imported for use along with three dredgers imported by the same appellant earlier. The dredgers and parts and accessories were imported for execution of the contract entered into with M/s. Swan LNG Pvt. Limited. The Revenue in the case of parts and accessories imported along with three Dredgers has allowed to be cleared as parts and accessories of dredgers and accepted the classification under 89051000

as Dredgers only. In the second consignment, the appellant imported old and used pontoons, pipes declaring as integral part of dredgers Al Mirfa, Kattouf and Embarka 5 and old and used various types of pipelines, elbow, fittings and equipments integral parts of dredger and claimed the classification under 89011090 and 89051000 respectively. The entire case of the Revenue is on the basis that these two consignments i.e. bills of entry No. 8465433 and 8465442 both dated 07.02.2017 were not imported along with three dredgers. Therefore, the same cannot be classified under the head of 'Dredgers' and will be classifiable under the respective head of individual parts. We find that in the peculiar facts of the present case, there is no difference in the nature of the goods imported with three dredgers and goods imported subsequently under two bills of entry dated 07.02.2017. It is also not disputed that whether the same parts and accessories i.e. pontoons, pipes etc. imported with first consignment and similar items imported in the second consignment were used put together for the activity of dredging for their clients. Both the consignments were imported by the appellant for only one project. Since the dredger and its parts are huge in size and quantity, it is not possible to import the entire consignment at a time. Therefore, the entire goods were imported in piece-meal. However, all the goods presented together would constitute dredger and then only it can be used for the work assigned to the appellant. As

regards the heavy reliance made by the Adjudicating Authority on Note 2 of Section XVII of Customs Tariff Act, we find that certain goods, for the purpose of classification, were excluded from the second schedule but floating pipes, pontoons specially designed and components of CSD dredgers are not covered under any exclusion clause. We observed that as submitted by the Id. Counsel, the dredgers does not mean the bare dredger but it consists of four part i.e. (a) Main Platform, (b) Pipelines (c) Anchors (d) Cutter Heads. As per the British Standard BS-6349, the dredger consist of all the above four parts which include pipelines and pontoon also. If the parts such as pontoons, pipelines and other parts are excluded then the dredger will not be complete and the object for the use of the dredger cannot be achieved. From the facts of the case, even though the same parts were imported along with three dredgers but the remaining parts which were imported subsequently which are subject matter of this case were used for the same work in the same manner. In this position, some parts of same goods cannot be treated differently.

5.1 We have gone through the General Rules of Interpretation and the relevant Rule 2(a) is reproduced below:-

“GRI 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 failing to be classified as complete or finished by virtue of this Rule), presented **unassembled or disassembled**.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

3. When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when **two or more headings each refer to part only of the materials or substances contained in mixed or composite goods** or to part only of the items in a set put up for retail sale, **those headings are to be regarded as equally specific** in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, **composite goods** consisting of different materials or **made up of different components**, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), **shall be classified as if they consisted of the material or component which gives them their essential character**, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading **which occurs last in numerical order** among those which equally merit consideration.”

From the plain reading of the above Rule 2(a), it can be seen that even if the goods is presented in unassembled or disassembled , if it has essential character of complete or finished item, it shall be taken to include a reference to that article complete or finished article. In the present case, three dredgers along with the parts and accessories supplied therewith and subsequent import of parts and accessories, though they are in unassembled or dis-assembled form but taking entire material together, has only essential character of the complete or finished item. Therefore, irrespective of whether the dredgers imported with some parts and

remaining parts imported subsequently, it cannot be interpreted that the subsequent import of parts and accessories are different and cannot be classified along with dredgers and parts imported initially. With reference to Rule 2(a), this Tribunal has dealt with a case of Rule 2(a) of General Rules of Interpretation of the Customs Tariff Act 1975, wherein the goods were separately imported at different Ports and at different point of time and even then the Tribunal has held that all the consignments shall be classified as finished article. The case of the appellant is on a much better footing that the goods were imported by the same appellant, only with a gap of one month but for the same project and for the use of entire consignment together. Therefore, by drawing inference from Tribunal judgment in the case of *Samay Electronics Pvt. Limited vs. CC (Import), Mumbai – 2015 (328) ELT 238 (Tri. Mumbai)*, the goods imported in two different consignments shall be classified in terms of Rule 2(a) of GRI.

6. As discussed above, once the integral part of equipment is imported and other equipment and parts are imported then, even though the goods transported at different time, shall be considered as put together and classification to be decided accordingly. Therefore, merely because of the fact that the goods in question in the present case imported under two bills of entry and subsequent to import of three Dredgers for the purpose of classification of the consignment to be taken together and will merit

classification under one Chapter head of Dredger. In the case of *Sharp Business Machines Pvt. Limited – 1990 (49) ELT 640 (SC)*, the facts was that the importer imported three consignments of components and consumables in SKD/CKD condition for plain paper copiers under three bills of entry dated 21.01.1987. The importer also imported one consignment of such goods from Singapore vide bill of entry dated 11.03.1987. The Tribunal dealing with this case, dismissed the appeals of the importer by recording a finding that one has to look into the respective licences and not to the fact that if all the consignments covered by all the bills of entry are assembled together, there will be a full and complete machine. The said decision was upheld by the Hon'ble Supreme Court as per the above citation. The facts of the present case is similar to the facts of the above case inasmuch as all the consignments of Dredger and some parts were imported on 10.01.2017 and remaining parts of the same equipment were imported under two bills of entry dated 07.02.2017, therefore, merely because of the time gap, both cannot be classified under a different head, particularly for the reason that some parts which were imported along with dredgers were classified under the head of Dredger i.e. 8905. The similar facts were also involved in the case of *Hindustan Motors Limited – 2003 (156) ELT 155* wherein the importer imported complete diesel/ petrol engines in unassembled condition during the period February 1999 to July 2000 and cleared the same under 104 bills of entry by declaring them as parts and components of

such engines. The matter was taken up in appeal before this Tribunal and this Tribunal observed that M/s. Hindustan Motors Limited had imported component sets of engines in unassembled condition which on assembly would have the essential character of the complete or finished by application of Rule 2(a) of the General Interpretative Rules. Aggrieved by this decision, M/s. Hindustan Motors filed civil appeal before the Hon'ble Apex Court and the Hon'ble Apex Court dismissed the said appeal which is reported at -2005 (181) ELT A130 (SC). In this case also the entire set of diesel/ petrol engine were imported in SKD/CKD form at different dates ranging from February 1999 to July 2000 therefore, even though the goods were imported at different time but for the purpose of classification of the goods, treated as presented together and classification was decided accordingly. In the present case also, there is no dispute that the parts and accessories which were imported along with dredgers are classifiable under the head of Dredger i.e. 8905. Therefore, the subsequent import under two bills of entry, which is the subject matter of this case also to be classified under CTH 8905 in terms of Rule 2(a) of General Interpretative Rules, in view of the above judgment. However, if the contention of the Revenue is accepted then only due to the different time of import of the complete set of equipment, the classification is to be decided independently, then this can lead to an easy *modus-operandi* for avoiding duty by the assesseees as

suitable to them but as per interpretation of Rule 2(a) GRI drawn by Tribunal and Hon'ble Supreme Court, the above said *modus operandi* is not possible.

7. As regards the heavy reliance placed by the department on Accessories (Condition) Rules, 1963, that only if the parts and accessories are imported along with dredgers then only it is classifiable under the head of dredger. In this regard, we find that there is no dispute that the same importer has imported all the goods for the same purpose i.e. execution of works contract. Therefore, it cannot be said that the second consignment was not imported along with dredgers. The interpretation of Rule reveals that it is not merely a case that parts and accessories are imported physically with the dredger but entire consignment imported by the same appellant for the same single project but in two parts, it is to be interpreted that even second consignment of old and used pontoons, pipeline etc. are imported along with dredgers. Moreover, the dredgers and parts and accessories imported by the appellant is not for sale therefore, the entire consignment is used for execution of the project. Therefore, there is no question of any separate charge made for such supplies. Since the complete import, even though in two parts, is for one project, number of consignment of parts and accessories cannot be separated in terms of Rule 2(a) of GRI. Accordingly, there is no contravention of Accessories (Condition) Rules, 1963. As per the HSN Notes of Chapter 89, for the purpose of classification

of a complete vessel, certain parts which are separately presented are required to be classified in proper heading. The said Chapter Note is reproduced :-

“(B) Hulls of any material.

Complete vessels presented unassembled or disassembled, and hulls, unfinished or incomplete vessels (whether assembled or not), are classified as vessels of a particular kind, if they have the essential character of that kind of vessel, in other cases, such goods are classified in heading 89.06. Contrary to the provisions relating to the transport equipment falling in other Chapters of Section XVII, this Chapter **excludes** all separately presented parts (**other than** hulls) and accessories of vessels or floating structures, even if they are clearly identifiable as such. Such parts and accessories are classified in the appropriate headings elsewhere in the Nomenclature, for example:

From the above Chapter note in HSN, it can be seen that the goods imported by the appellant i.e. pontoons, pipes and other accessories are not excluded, therefore, the said goods being integral part of Dredger merit classification as Dredger under CTH 8905. This also clearly shows that the goods in question i.e. pipes, pontoons and other accessories are nothing but part and parcel of Dredger and are correctly classifiable as dredger under 8905.

7.1 The Revenue heavily relied on the General Note III under Section XVII of HSN which are reproduced below:-

(III) PARTS AND ACCESSORIES

It should be noted that Chapter 89 makes no provision for parts (other than hulls) or accessories of ships, boats or floating structures. Such parts and accessories, even if identifiable as being for ships, etc., are therefore classified in other Chapters in their respective headings. The other Chapters of this Section each provide for the classification of parts and accessories of the vehicles, aircraft or equipment concerned.

It should however be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:

(a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).

and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).

and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

The above General Note can be applicable only if the classification of the goods is not possible as per the Customs Tariff Act, which is the statutory provision for classifying the goods. As discussed above, the goods imported by the appellant are integral part of Dredger and Dredger falling under Chapter 8905 and does not have separate heading for parts and accessories. Therefore, the parts and accessories are nothing but integral part of the Dredger and therefore, General Note III cannot prevail over the provisions of Customs Tariff Act. Moreover, the above General Note can be at the most applicable only in case where the parts of general nature imported independently whereas in the present case, the parts and accessories are solely and principally suitable for use with Dredger and the same were imported along with Dredger for use putting together for one and the single project. Therefore, the above General Note is not applicable.

8. The Revenue has heavily relied on the Accessories (Condition) Rules, 1963 which is of no help to the Revenue for the reason that in the present case, there is no separate heading for parts and Dredgers. Therefore, the parts of dredger otherwise classifiable under the head Dredger only and

even if it is presumed that the parts being imported separately, then also the same will merit classification under the head of Dredger.

9. Though we have discussed above in length about the legal interpretation of relevant provisions, but on the very identical issue, in the same set of facts, this Tribunal has decided the issue particularly for the same product i.e. Dredger, in the case of *Boskalis Dredging India Pvt. Limited vs. CC, Bhubaneswar – 2001 (135) ELT 1396 (Tri. Kolkata)*. In this case, the facts and the order thereon, is as under:-

The facts in the said case are:-

“1. The appellants herein, M/s. Boskalis Dredging India Pvt. Ltd. entered into a contract with M/s. Paradip Port Trust for dredging of a Coal Handling Berth. For this purpose, the appellant firm imported an old and used Cutter Suction Dredger in operational condition together with its equipment and other functional items. The appellants filed six different bills of entry in respect of different types of items imported along with the main body of the Dredger. These items can be broadly categorized as Dredger; Pipes c/w flanges; Rings & Nuts and Bolts; Anchors; Pontoons; Delivery valves, Spuds, Cutter Heads, Truck Tyres for use as Fenders; various Spare Parts and Consumable Stores.

2. The various items in respect of which different bills of entries were filed by the appellant company are as under :-

Vessel Particulars	Port of Supplier	B/E No. and dated	Brief description of the goods
1. M.V. Ostara	Singapore	1/96-97 dt. 3-4-86	1(one) OH dredger Anchor handling pontoon type (Coby)
2. Do Line No. 2	Do	2/96-97 dt. 3-4-96	One Survey Boot (Hassan) 1. Pipes, bends, waterbox, bolts, 2. nuts etc.
3. Condock IV Rot. No. 60/96	Papendrecht	26/96 dt. 26-4-96	One Cutter Suction Dredger (Germini) 1. Various paints. 2.
4. Condock IV Rot. No. 60/96	Do	23/96 dt. 26-4-96	Floating Pipe Line 1. Bend in the Winch. 4. Pontoons. 3. . 2. bone joints.
5. Do	Do	25/96 dt. 26-4-	Flexible floating pipe line.

		96	1.
6. Do	Do	24/96 dt. 26-4-96	1. Submerged Pipe Line.
7. Do	Do	27/96 dt. 26-4-96	Various Pipe Line Bends 4. Valves 3. Shore Pipe 2. 1. Parts.

3. The appellant firm claimed classification of all the above items under Chapter sub-heading 8905.10 and 'nil' rate of duty in terms of Notification Nos. 133/87-Cus., dated 19-3-87 and 106/92-Cus., dated 1-3-92. The goods were initially assessed to duty provisionally pending submission of R.B.I. Certificate regarding foreign exchange transaction. One OH Dredger Anchor Handling Pontoon Type and one Cutter Suction Dredger were assessed at 'nil' rate of duty by extending the benefit of Notification No. 133/87. However, dispute arose in respect of other items as to whether the same are parts of the Dredger liable to be extended the benefit of notification in question or the same are required to be assessed separately and individually under their respective headings attracting duty. The appellants' claim is that all the items imported by the two different vessels though covered under different invoices showing separate prices of each item and though covered under different bills of entry essentially comprise a complete Dredger and merit classification under sub-heading 89.05 and as such, attract Notification No. 133/87. The appellants' claim is that the Dredger being a huge item cannot be imported in its complete form and as such, the same was dispatched by their parent company, M/s. Boskalis of Netherlands in semi-knocked-down condition.

The decision in the case is :-

"10. 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. This can be done by a separate disposal system or discharge system can be a part of the Dredger by itself. Referring to the British Standard Specification (BS 6349, Part - 5 : 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 from 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 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.

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

cutterhead driving horsepower, which may range from 20 to 5000, or in the case of very large dredgers by the total installed horsepower.....

The main pontoon structure contains the dredge pumps (s), the main engines and all ancillary engines, drives and equipment.

The discharge from the dredge pumps (s) passes over the stern (or opposite end to 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. Sometimes 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 :-

"4.4.2. Pipelines

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 hydrotransport process. Pipelines fall into the following two categories."

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 cutterhead, 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 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 require any consideration. The appeal is thus allowed."

From the above decision of the Tribunal, which was upheld by the Hon'ble Supreme Court, reported as Commissioner of Customs vs. Boskalis Dredging India Pvt. Limited - 2002 (139) ELT A313 (SC), it can be seen that the goods were absolutely identical and the Dredger was classified under CTH 8905 whereas the other parts of the Dredger which were imported at different dates proposed to be classified as parts and accessories. Further, the Tribunal has categorically held that all the goods including pipelines and parts of dredger to be classified under Chapter heading 8905.00 as Dredger and accordingly they are entitled to exemption Notification No. 133/87-Cus

dated 19.03.1987. The aforesaid decision was further relied upon by the Tribunal in the case *Dredging Corporation of India Limited vs. CC, Calcutta – 2002 (140) ELT 195 (Tri. Kolkata)* wherein the similar issue was raised and the Tribunal has followed the earlier decision and allowed the appeal of the assessee. This decision was also upheld by the Hon'ble Supreme Court as Civil Appeal filed by the Revenue was dismissed, the same is reported as 2002 (139) ELT A90 (SC). The consistent view taken by the Tribunal which was confirmed by the Hon'ble Supreme Court, now there is no scope even for interpretation and all the parts of Dredger will merit classification under CTH 89051000. Though the appellant in bills of entry No. 8465433 dated 07.02.2017 declared old and used pontoons as integral part of the dredger but under CTH 89011090, however, in their submission before the Adjudicating Authority they have categorically stated that declaration under this Chapter heading was made for the reason that in both the Chapter headings 8905 and 8901 the rate of duty was NIL.

10. Though, we discussed in length on the basis of facts as well as by support of the cited judgments that pipes and pontoons are integral parts of Dredger but we have further examined some more material available on record. As per the British Standard as well as the Chartered Engineer has certified that Pontoons are the essential components of floating Pipelines. In the relevant invoices of the Pontoons at the bottom, it is declared by the

supplier that pontoons are the integral parts of dredgers. In the statement dated 22.03.2017 Mr. Mohammed Abdelnabi, Technical Superintendent of appellant stated that pontoons are used as floating structure for pipelines so that the pipelines do not sink in water and the same is not used to carry or transport any goods. Mr. Nicholas Charles D'Souza, Logistic Manager of appellant, in his statement dated 21.04.2017, stated that the vessel MV Mighty Servant brought three dredgers, two Multicats and one barge along with pontoons and pipelines. Due to constraint of place, balance pontoons and pipelines were brought subsequently on a barge "Sulayyah". In British Standard 6349: Code of practice for dredging and land reclamation: refers to Pipeline in Para 4.4.2 and Floating Pipeline in Para 4.4.2(b). The adjudicating authority observes that the appellant have declared the pontoons under CTH 89011090 as integral parts of the dredgers, that chapter heading 8901 pertains to cruise ships, excursion boats, ferry boats and that the pontoons in question are used for keeping the pipelines afloat.

11. With the above undisputed facts on record, it is clear that the pontoons imported by the appellant in the present case is in any case not classifiable under CTH 89011090, however, it is clearly classifiable as integral parts of dredgers under CTH 89051000.

12. As per our above discussion, we are of the view that all parts of Dredger has to be classified under the head Dredger i.e. 89051000, we hold that the goods of bills of entry No. 8465433 and 8465442 both dated 07.02.2017 are correctly classifiable under heading CTH 89051000 and accordingly eligible to exemption Notification No. 12/2012-Cus dated 17.03.2012.

13. Since the confirmation of demand of duty, redemption fine, interest, penalties on the appellants are consequential to classification claimed by the Revenue in the adjudication order, the same will also not survive since the goods are not liable for duty and the demands itself are not sustainable. Accordingly, we set-aside the impugned order and allow the appeals, with consequential relief.

*(Order pronounced in the open court on **02.11.2018**)*

Raju
Member (Technical)

Ramesh Nair
Member (Judicial)