CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. I

Customs Appeal No.50209 of 2020

[Arising out of common Order-in-Appeal No.CC(A) CUS/D-I/385 to 387/2019-20 dated 17/18.10.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110 037.]

M/s.NBCC (India) Ltd.
(Formerly National Buildings Construction Corporation Ltd.),
RBG-Infra, Zone,
NBCC Business Centre, Block-A, 8th Floor,
Logix Technova, Sector-132,
Noida (U.P.)-201 301. **....APPELLANT**

Versus

....RESPONDENT

Commissioner of Customs (Imports)
New Customs House,
Near IGI Airport,
New Delhi-110 037.

WITH

Customs Appeal No.50210 of 2020

[Arising out of common Order-in-Appeal No.CC(A) CUS/D-I/385 to 387/2019-20 dated 17/18.10.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110 037.]

M/s.NBCC (India) Ltd.
(Formerly National Buildings Construction Corporation Ltd.),
RBG-Infra, Zone,
NBCC Business Centre, Block-A, 8th Floor,
Logix Technova, Sector-132,
Noida (U.P.)-201 301. **....APPELLANT**

Versus

Commissioner of Customs (Imports) **....RESPONDENT**
New Customs House,
Near IGI Airport,
New Delhi-110 037.

AND

Customs Appeal No.50211 of 2020

[Arising out of common Order-in-Appeal No.CC(A) CUS/D-I/385 to 387/2019-20 dated 17/18.10.2019 passed by the Commissioner of Customs (Appeals), New Customs House, Near IGI Airport, New Delhi-110 037.]

M/s.NBCC (India) Ltd.
(Formerly National Buildings Construction Corporation Ltd.),
RBG-Infra, Zone,
NBCC Business Centre, Block-A, 8th Floor,
Logix Technova, Sector-132,
Noida (U.P.)-201 301. **....APPELLANT**

Versus

Commissioner of Customs (Imports) **....RESPONDENT**
New Customs House,
Near IGI Airport,
New Delhi-110 037.

Appearance:
Present for the Appellant :None
Present for the Respondent: Shri Girijesh Kumar, Authorised Representative.

CORAM:
HON'BLE DR. RACHNA GUPTA, OFFICIATING PRESIDENT
HON'BLE MS. HEMAMBIKA R.PRIYA, MEMBER (TECHNICAL)

Final Order Nos. 51579-51581/2026

Date of Hearing:17.09.2026
Date of Decision:06.10.2026

DR. RACHNA GUPTA:

The present order disposes of 3 appeals arising out the common Order-in-Appeal No.CC(A) CUS/D-I/385 to 387/2019-20 dated 18.10.2019. The appellant also being same i.e. National

Building Construction Corporation ltd.[1]. The issue involved is also identical i.e. violation of Regulation 7 of Project Import Regulations, 1986[2].

2. The facts relevant for the present adjudication are that NBCC had applied to the office of the Commissioner of Customs Project (Import) Cell, New Customs House, New Delhi for registration of their contract under Project Import Regulation, 1986, as amended, for import of certain operators/machines for substantial expansion of thermal power plant under concessional rate of duty and executed an indemnity bond of Rs.69,79,000/-. A letter of the Competent Authority dated 5.11.2008 was also submitted certifying that an Inter-state Thermal Power Plant of capacity of 1000 MW or more is to be set-up in the state of Madhya Pradesh to privatize distribution in all cities of all those states. The contract was registered under Registration No.02 of 2012.

3. The importer/appellant filed bill of entry no.6595784 dated 20.04.2012 .The Goods were cleared on nil duty. However, the Department observed that Regulation 7 of Project Import Regulations, 1986 has not been complied with by the appellant as

[1] NBCC
[2] Regulations, 1986

they have not submitted the reconciliation statement along with other relevant documents as that of plant site verification report, documentary proof of initial set-up, final payment certificate form the supplier/bank, installation certificate from the authorized Chartered Engineer. Hence the show cause notice[3] No.87/2015 dated 24.02.2015 in Appeal No.50210 of 2020; show cause notice no.89/2015 in Appeal No.50211/2020 and show cause notice no.88/2015 dated 24.02.2015 in Appeal NO.50209 of 2020 were served upon the appellants proposing the denial of nil duty benefit of Project Import Regulation 1986 to the appellant with respect to the goods in question. Requisite customs duty was proposed to be recovered in terms of Section 18 of Customs Act, 1962 along with the applicable interest in terms of Section 28 (A&B) of the said Act. The proposal of three of the SCNs was initially confirmed by the common order-in-original bearing nos.56-58 of 2016 dated 31.01.2017. The appeal against the said order has been rejected by the order-in-appeal as has been challenged herein. Being aggrieved, the present appeals were filed in the year 2020.

4. Since the year of its filing till date more than ample effective opportunities have already been given to the appellant but the

[3] SCN

appellant has either opted not to be present or has requested an adjournment, on one or the other pretext. Vide order 24.10.2024, the appellant was warned that the next date would be the last opportunity. The appellant opted to not appear on 5.12.2024 nor even on 16.01.2025. A fresh vakalatnama thereafter was filed on behalf of the appellant on 03.4.2025. Since then, till date again, more than 10 opportunities have been granted to the appellant to pursue the appeal. On the last date of hearing, (06.08.2026), when the appellant requested for adjournment, it was clarified that:

> "this shall be the last opportunity, failing which the appeal shall be decided on merits. List the appeal on 17.09.2026".

5. Today, despite the said warning/clarification, the appellant has opted to remain absent. In the given circumstances, we refrain ourselves to adjourn the matter any further. In compliance of the directions of the Hon'ble Supreme Court in the case of **Balaji Steel Rolling Mills Vs. CCE, & Customs[4],** we proceed to hear the Department and to decide the appeal on its merits.

[4] 2014 (310) ELT 209

6. Learned Departmental Representative for the Department has submitted that the Department's case is the non-submission of the documents by the appellant required for finalization of the Project Import Contract under Regulation 7 of Project Import, 1986 within the prescribed period. The appellant's main contention is that vide letter dated 11.12.2012, extension was prayed as the requisite installation was taking time. It has also been the defence that the reconciliation statement and the proof of final payment was subsequently submitted by the appellants. However, those submissions have rightly been rejected by the Commissioner (Appeals) for want of strict statutory compliance of the Project Import Regulation, 1986 read with the procedure prescribed under CBEC Circular No.14/2006 dated 17.04.2006 and Circular no.22/2011 dated 4.5.2011. Learned Departmental Representative submitted that as per Regulation 7, there is time prescribed for finalization of the Contract. It strictly requires the importer to submit the prescribed statements, and quantity details and supporting documents within 3 months from the clearance of last consignment or within an extended period explicitly allowed by the proper officer. Admittedly, the said requirement has not been fulfilled. It is not relevant for the purpose that the appellant ultimately produced the document as

the time requirement for documents to be filed within 3 months of the last clerance was the only condition for seeking concessional benefit of nil customs duty. Mere installation of the imported equipment also can not suffice the requirement of Regulation 7. The letters seeking extension for installation per se cannot be considered as, "permission granted". Plea of bonafide belief is also not to the rescue of the appellant. Learned Department Representative also relied upon the decision of the Hon'ble Supreme Court in **Mihir Textile Ltd. Vs. Collector of Customs, Bombay**[5], wherein it was held that the relevant question is not about certain provision whether it is mandatory or directory. The question is whether concessional relief of duty which is made dependent on the satisfaction of certain conditions can be granted without compliance of such conditions. Hon'ble Court held that no matter even if the conditions are only directory, those have to be fulfilled with the circumstances. Learned Departmental Representative has thus prayed for the dismissal of the appeal.

7. Having heard the Departmental Representative, perusing the entire records of the appeal memo including the grounds of appeal, we observe that the only issue to be adjudicated is –

[5]1997 (92) ELT 9 (SC)

(1) Whether the appellant has failed to comply with Regulation 7 of Project Import Regulations, 1986; and in case of non-compliance, whether appellant is not entitled for the concessional benefit or nil customs duty on the imports.

8. Foremost, we have perused Regulations 7, which reveals as follows:-

Finalisation of Contract:

" The importer shall within three months from the date of clearance for home consumption of the last consignment of the goods or within such extended period as the proper officer may allow, submit a statement indicating the details of the goods imported together with necessary documents as proof regarding the value and quantity of the goods so imported in terms of this Regulation and any other document that may be required by the proper officer for finalization of the contract."

9. We have also perused the Project Import Regulation, 1986 as such. The Regulations are for assessment and clearance of the goods falling under Heading No.98.01 of a Schedule of Customs Tariff Act, 1975 (Regulation 2). The exemption shall be available

to the goods of 98.01 which are imported against one or more specific contracts registered with the appropriate Customs House. (Regulation 4 & Regulation 5). Regulation 7 talks about the finalization of the contract. From the perusal of the said Regulation, it is clear that the necessary documents and details as mentioned in the said Regulation have to be provided to the Competent Authority/Commissioner of Customs House, within 3 months from the date of clearance for home consumption of the last consignment of the goods or within such extended period, as the proper officer may allow. We observe it to be an admitted fact that the appellant vide letter dated 11.12.2012 had applied for the requisite extension. Apparently, there is nothing on record to show that the said extension request was ever rejected. In addition, the most relevant date, as per Regulation 7, is the date of last clearance for home consumption of the imported goods. As the period of 3 months for submitting the requisite documents mentioned therein, has to reckon from the said date. There is nothing on record to know the date of last clearance. The burden was upon the Department to prove the same. The said burden accordingly undischarged. It is the simultaneous apparent fact that all the requisite documents were provided prior to the show cause notices were issued to the appellants. There is a

categorical endorsement **(handwritten)** on the show cause notice itself to this effect. The said endorsement amounts to be the deemed closure otherwise. We draw our support from the principle that emerges from the decision of the Madras High Court in the case of **The Commissioner of Income Tax Vs. S. Rangasamy Nadar & Co.**[6] **,** wherein it was held that in the absence of any order passed by the assessing officer on the application for extension of time filed by the assessee, it is open to the assessee to presume that the time sought for by the assessee had been granted and is that where an application seeking extension of time has been made and the competent authority has neither rejected the same nor communicated its decision, the applicant may, in appropriate circumstances, proceed on the basis that the time sought has been granted. Accordingly, once the application seeking extension of time was before the Competent Authority and remained undisposed of, the subsequent filing of the response within the period sought by way of extension ought not to be treated as an unauthorised or belated filing, particularly when no order rejecting the request for extension had been passed prior to such filing.

[6] T.C. No.36 of 1999 decided on 02.12.2002

10. The impugned order fails to deal with the contentions of the Appellant wherein the reference of the letters dated 04.07.2016, 16.03.2016 and the documents submitted along with the same were relied upon.

11. Hence we hold that the Department has wrongly recorded that the importer neither sought any extension, nor appeared personally for waiver of the submission of documents. Further, the importer has not furnished reconciliation statement. The said statement is against the record of the proceedings and the same has duly been admitted by the Respondent in the written submissions filed on 16.09.2026. The grounds for rejection of the waiver request is against the record and summarizes the incorrect facts and therefore the appeal is liable to be allowed.

12. The Authority has failed to consider the effect of the passing of the circular dated 17.04.2006 issued by the Central Board of Custom, Department of Revenue, Ministry of Finance, Govt. of India in right perspective. The clarifications were issued for proper utilization of the goods imported as project import finalization of project reports. The application of the requirements for the Plant related to the imposition of the Custom Duty were

relaxed for the PSU's. Admittedly, the Appellant herein is a Public Sector Undertaking under the Ministry of Housing and Urban Affairs, Govt. of India and is not liable to be levied under the Act despite having complied with the requirements under the Act.

13. In view of these observations, we are not in agreement of the order under challenge. The order-in-appeal under challenge is, therefore, set aside. Consequent thereto, three of the appeals are allowed.

[Order pronounced on 06.10.2026.]

(DR. RACHNA GUPTA)
OFFICIATING PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Ckp.