IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 77608 of 2018

(Arising out of Order-in-Original No. Kol/Cus/Commissioner/Port/18/2018 dated 22.02.2018 passed by the Commissioner of Customs(Port) Custom House, 15/1, Strand Road, Kolkata-700001)

M/s. Tata Steel Limited, **: Appellant**
43A, Jawaharlal Nehru Road,
Kolkata-700071

VERSUS

Commissioner of Customs (Port),Kolkata **: Respondent**
Custom House, 15/1, Strand Road,
Kolkata-700001

APPEARANCE:

Shri Deepro Sen, Advocate
Shri Abhijit Biswas, Advocate
Shri Shovit Betal, Advocate
for the Appellant

Shri S. Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76368/2026

DATE OF HEARING / DECISION: 29.09.2026

Order: [PER SHRI K. ANPAZHAKAN]

The present OIO No. KOL/CUS/COMMISSIONER/PORT/18/2018 dated 20-02-2018 has been passed by the Commissioner of Customs(Port) Custom House, 15/1, Strand Road, Kolkata-700001, wherein Customs duty amounting to Rs. 14,13,53,568/- has been confirmed along with interest and penalty of Rs. 1,00,00,000/- has been imposed . Redemption Fine of Rs. 5,00,00,000/- has also been imposed.

2. Facts of the case are that M/s. Tata Steel Ltd, Kolkata (hereinafter referred as the Appellant) is a manufacturer of iron and steel products. The Appellant has obtained 7 EPCG Licences from the Directorate General of Foreign Trade (DGFT) during the period 15-05-2010 to 21-12-2012. Claiming benefit of zero duty import under such licences, the Appellant imported various refractory materials for re-lining of its blast furnaces located at its manufacturing unit at Jamshedpur. The imports were made vide several bills of entry for the period September 2011 to February 2013.

2.1. On or about March 2016, the DRI took cognizance of such import and investigated the matter. The officers were of the view that the refractory materials imported by the Appellant for re-lining of furnaces cannot be considered as 'Capital goods' for the purpose of availing the zero duty exemption under the EPCG Scheme , as provided under Notification No. 102/2009-Cus dated 11-09-2009. Accordingly, Show Cause Notice dated 24.05.2017 was issued proposing to demand customs duty on the refractory material imported by the Appellant, by denying the said exemption. The Notice also proposed demand of interest, penalty and confiscation of the goods.

2.2. On adjudication, the Ld. Adjudicating authority has confirmed the demand of customs duty along with interest and penalty and also imposed redemption fine in lieu of confiscation. Aggrieved against the impugned order, the appellant has filed this appeal.

3. The Appellant submitted that the issue is no longer *res-integra* , as the same issue has already been decided by this Tribunal in the case of ***M/s. Jai***

Balaji Industries Limited Versus Commissioner of Customs (Port), Kolkata, 2022 (8) TMI 660 - CESTAT KOLKATA wherein it has been held that refractory materials imported for relining of furnace/maintenance purposes are eligible for zero duty import under the EPCG Scheme under *Notification No. 102/2009-Cus dated 11-09-2009, as the said r*efractory materials used for re-lining of furnace falls within the ambit of 'accessories' and are thus Capital goods .

3.1. Thus, the Appellant submits that the demands of customs duty confirmed along with interest and penalty is legally not sustainable. As there is no violation of the provisions of Customs Act or the provisions of Import Policy, the goods imported and cleared under EPCG Scheme are not liable for confiscation and hence the redemption fine imposed in lieu of confiscation is legally not sustainable.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We find that the Appellant has imported refractory materials for re-lining of furnaces. The department has held the view that the said refractory material used for relining cannot be considered as 'Capital goods' for the purpose of availing the zero duty exemption under the EPCG Scheme. Accordingly, the exemption as provided under Notification No. 102/2009-Cus dated 11-09-2009 has been denied and customs duty has been demanded and confirmed in the impugned order, by denying the said exemption.

6.1. We find that the said issue whether the refractory materials imported for relining of

furnace/maintenance purposes are eligible for zero duty import under the EPCG Scheme or not, has already been decided by this Tribunal in the case of ***M/s. Jai Balaji Industries Limited Versus Commissioner of Customs (Port), Kolkata, 2022 (8) TMI 660 - CESTAT KOLKATA*** wherein it has been held that refractory materials imported for relining of furnace/maintenance purposes are eligible for zero duty import under the EPCG Scheme, as provided under *Notification No. 102/2009-Cus dated 11-09-2009, as the said* used for re-lining of furnace falls within the ambit of 'accessories' and are thus Capital goods . The Tribunal after examining that definition of *"capital goods"* under *Para 9.12 of the FTP* held that Refractories used for re-lining of furnace is an accessory indirectly used for manufacture of finished goods hence, they would be covered within the 'means' part of the definition of *"capital goods"*. The Tribunal held the view that the 'includes' part of the definition of *"capital goods"* does not restrict the 'means' part and therefore, express mention of refractories for initial lining would not mean that refractories for re-lining are excluded from the purview of *"capital goods"*. The relevant part of the said order is extracted below:-

> *"41. We agree with the submission of the Ld. Advocate for the Appellants that the refractories imported by the appellants are covered by the definition of accessory and, hence, included in the definition of capital goods Thus, the definition of capital goods not only includes refractories for initial charge but also those imported as replacement for the purpose of re-lining or maintenance of the furnaces. The Appellants have therefore,*

correctly availed the benefit of the above two exemption notifications

42. The first part of the definition of capital goods uses the term 'means. The term 'means is exhaustive in nature and is meant to cover all the items mentioned therein, namely, plant, machinery, equipment of accessories, as ordinarily understood, required for the manufacture or production, either directly or indirectly of goods Refractory bricks are clearly accessories required for lining of the furnace, and hence indirectly used for manufacture of finished goods by the appellants. The use of the expression refractories for initial lining in the inclusive part of the definition of capital goods does not in any way restrict the meaning of the terms used in the 'means part of the definition.

43. In the case of P. Kasilingam and Others v. P.S.G. College of Technology [AIR 1995 S.C. 1395), the Hon'ble Supreme Court explained the import of "includes" in a definition as follows:

> *"The word 'incudes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words 'means and includes' on the other hand, indicate "an exhaustive explanation of the meaning which, for*

the purposes of the Act, must invariably be attached to those words or expressions"

44. Also in the case of Regional Director, ESI Corporation v. High Land Coffee Works of P.E.X Saldanha & Sons [AIR 1992 SC 129], the Hon'ble Supreme Court observed as follows

"The word 'includes' is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "statute". When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include"

45. In the case of M/s. Black Diamond Beverages v. Commercial Tax Officer, Calcutta, (AIR 1997 SC 3550), wherein, interpreting the definition of 'sale price' the Hon'ble Supreme Court observed as under:

"7. It is clear that the definition of 'sale price' in Section 2(d) uses the words 'means' and 'includes". The first part of the definition defines the meaning of the word 'sale price' and must, in our view, be given its ordinary, popular or natural meaning. The interpretation thereof is in no way controlled or affected by the

second part which includes certain other things in the definition. This is a well-settled principle of construction. Crales on Statute Law (7th Edn. 1.214) says:

"An interpretation clause which extends the meaning of a word does not take away its ordinary meaning

....Lord Selbome said in Robinson v. Barton Eccles Local Board, (1883) 8 App Case 798 (801) An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be property applicable, but to enable the word as used in the Act.... to be applied to something to which it would not ordinarily be applicable."

Therefore, the inclusive part of the definition cannot prevent the main provision from receiving its natural meaning."

46. Therefore, we hold that refractories meant for re-lining of furnaces, i.e., for replacement, are covered by the 'means' part of the definition of 'capital goods' and this interpretation cannot in anyway be restricted or controlled by the use of the expression 'refractories for initial lining' used in the inclusive part of the definition of 'capital goods'."

6.2. We find that the ratio of the said decision is squarely applicable to the facts and circumstances of

the present case. Thus, by relying on the decision cited supra, we hold that the Appellant are eligible for the benefit of zero duty import as provided under the EPCG Scheme vide *Notification No. 102/2009-Cus dated 11-09-2009.* Accordingly, we hold that the differential customs duty along with interest confirmed in the impugned order is not sustainable. As the demand of customs duty is not sustained and there is no intention to evade customs duty established, we hold that no penalty imposable on the Appellant and hence the penalty imposed in the impugned order are set aside.

6.3. As there is no violation of the provisions of Customs Act or the provisions of Import Policy, we hold that the goods imported and cleared under EPCG Scheme are not liable for confiscation and hence the redemption fine imposed in lieu of confiscation is legally not sustainable and hence the same are set aside.

7. In the result, we set aside the impugned order and allow the appeal filed by the Appellant with consequential relief, if any, as per law.

(Operative part of Order was pronounced in Open court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

rkp