CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH - COURT No. III

(1) Customs Appeal No. 40710 of 2019

(Arising out of Order-in-Original No.65904/2018 dated 31.10.2018 passed by Commissioner of Customs, Chennai-III, Custom House, 60, Rajaji Salai, Chennai 600 001.)

M/s. Varaha Infra Ltd. **.... Appellant**
6, Jalam Vilas Scheme,
Poata, B-Road, Jodhpur,
Rajasthan – 342 001.

VERSUS

The Commissioner of Customs **... Respondent**
Chennai III Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai 600 001.

WITH

(2) Customs Appeal No. 40711 of 2019

(Arising out of Order-in-Original No.65904/2018 dated 31.10.2018 passed by Commissioner of Customs, Chennai-III, Custom House, 60, Rajaji Salai, Chennai 600 001.)

Shri Prem Singh, Director **.... Appellant**
M/s.Varaha infra Ltd.,
6, Jalam Vilas Scheme,
Poata, B-Road, Jodhpur,
Rajasthan – 342 001.

VERSUS

The Commissioner of Customs **... Respondent**
Chennai III Commissionerate,
Custom House,
60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Shri Hari Radhakrishnan, Advocate for the Appellant
Shri Sanjay Kakkar, Authorized Representative
for the Respondent

CORAM :

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER Nos.41057-41058/2026

DATE OF HEARING : 16.06.2026
DATE OF DECISION :25.09.2026

Per: Shri P. Dinesha

These Appeals filed by M/s. Varaha Infra Ltd. (1st Appellant) and its Director, Shri Prem Singh (2nd Appellant) are directed against Order-in-Original No.65904/2018 dated 31.10.2018 passed by Commissioner of Customs, Chennai-III.

2. Brief and relevant facts, as could be gathered from the impugned order and upon hearing both sides, are that the 1st Appellant had imported two 'Electronic Sensor Pavers Vogele Model Super 1800-2 with AB 600-2 TP 2 High Power Compaction' *vide* Bill of Entry No.7044059

dated 07.05.2012, had declared assessable value of the same as Rs.2,98,48,740/- and claimed benefit of exemption from Customs duty under Notification No.12/2012-Cus. dated 17.03.2012 as amended [Sl.No.368].

3. Entertaining a doubt that the exemption so claimed by the Appellant was not in order, it appears that the investigation was conducted by D.R.I, Jaipur Regional Unit, Jaipur during the course of which, they appear to have obtained copy of documents relating to the above import, apart from issuing summons and recording statements etc. During the course of investigation, the officers also conducted physical verification in the presence of the Chairman of the Appellant-company viz. Shri Mufat Singh Rao and two independent witnesses during which time the officers appear to have found that width of the machine without screed was 2.5 Mtrs. and screed attached with machine was of basic width 2.25 Mtrs. The statement of the Chairman of the Appellant-company was also recorded during investigation. The Chairman appears to have informed that the screed was not expandable without extension/nut

bolts etc. and that the extension of the screed was possible upto 5 Mtrs. with the help of extension.

4. After investigation, it appears that a Show Cause Notice dated 06.06.2017 came to be issued, by invoking the extended period of limitation, *inter alia* proposing to deny the benefit of exemption claimed by the Appellant-company, recover the same, apart from charging applicable interest and penalties. The notice also proposed to impose penalty under Section 112 (a) of Customs Act, 1962 on the Director, Shri Prem Singh, who is the 2nd Appellant in these Appeals.

5. The Appellants appear to have filed detailed replies which are not part of the appeal memo before us and hence, we go by the reply as reproduced in the impugned order. The fulcra of the replies are that :

- The Appellants had placed the order for two nos. of Electronic Sensor Paver Vogele-Model Super 1880-2 with AB 600-2 TP2 High power compaction for lying Bituminous upto 9 Mtrs. width.
- The SCN itself has not disputed that the purchase order was including accessories which are supplied along with the machine upto 9.0 Mtrs. working width.

- They had placed order for laying Bituminous pavement 7 Mtrs. size and above [upto 9.0 Mtrs in their case] and the accessories required for the above machines the supplier had supplied the required accessories and hence, the same were not imported separately.
- Reference was made to the decision of Larger Bench of CESTAT in the case of **Commissioner of Customs (Import), Mumbai Vs Ramky Infrastruture Ltd.** [2014 (306)ELT 525 (Tri.-LB)]. The allegation that the so-called accessories/bolt-on extension had been imported separately is incorrect as the same were imported along with 2 nos. of electronic paver machines as could be seen from RUD-4.
- The machine in question by addition of bolt-on extensions can lay bitumen width upto 9 Mtrs. while the Notification covers electronic paver finisher (with sensor device) for laying bituminous pavement 7 Mtrs. and above and hence, the Appellant's case is satisfying the criteria as specified under Notification No.12/2012 (*supra*).
- They had placed order only for machines which was for laying Bitumen upto 9 Mtrs. width which is as per the

purchase order / invoice which was duly verified by the authority before issuing SCN.

- Reference was made to the decision of Mumbai CESTAT in the case of **Gammon India Ltd. Vs CC (Import), Nhava Sheva** [2013 (298) ELT 740 (Tri.-Mumbai)].
- Facts of the case are distinguishable from the facts of **Ramky Infrastructure Ltd.** (*supra*) in view of the decision in **Gammon India Ltd.** (*supra*).
- There was no suppression or misdeclaration and hence, the proposed demand is clearly time-barred.
- The goods were cleared by the Customs officer after examination of the conditions and hence, demand cannot be raised beyond the normal period of one year under Section 28 of the Customs Act, 1962.
- Reliance was placed on the decision of Bangalore Bench in the case of **Stumpp, Schuele & Somappa Ltd. Vs Commissioner of Customs (Exports), Chennai** [2006 (194) ELT 437 (Tri.-Bang.)].

6. The Adjudicating Authority i.e. Commissioner of Customs, Chennai-III having considered the reply, found that –

- Without the bolt-on extensions, the machines can lay a pavement of width upto 5M only and it is only with bolt-on extensions, the machines can lay beyond 5M width.
- The Appellant thus imported bolt-on extensions to make the machine lay beyond 5M and hence, bolt-on extensions are not essential parts of the machine.
- The same stood confirmed by the statement of the Chairman that the importer and the supplier were aware of the capability of the imported pavers and that their basic width is 2.25M which could be extended to a maximum 5M with the help of extensions.
- The importer did not declare nor did they bring out the above facts either in the Bill of Entry or in any of their related documents and hence, they had suppressed the fact that the machines in the imported condition was capable of 3M to 6M width.
- The importer only knew that the imported machine cannot achieve width more than 5M, which could be achieved only with the help of external bolt-on extensions.
- The benefit of exemption of Notification No.12/2012 (*supra*) could be availed only if the imported equipment is

having pavement width of 7M size and above which is not met by the importer.

- The Appellant did not mention anything regarding the basic screed width.

In the light of the above observations, the Commissioner felt it proper and hence, *vide* No.65904/2018 dated 31.10.2018 confirmed the proposed demands/interest/ penalties in the SCN. The said Order-in-Original has been assailed in this Appeal.

7. Shri Hari Radhakrishnan, Ld. Advocate appearing for the Appellants contended as under :

7.1 The imported paver machines are covered under Notification No.12/2012-Cus. dated 17.03.2012 and are eligible for the benefit of 'nil' rate of duty. As per Sl.No.368 of the said Notification, the goods specified in List 16 required for construction of road are eligible for 'nil' rate of duty subject to fulfilment of condition 9.

7.2 As per the said condition, the goods can be imported by a sub-contractor for construction of road, wherein the said contract was awarded by NHAI.

7.3 The next criteria is that the goods should be covered under List 16. The 2nd item in list 16 is 'Electronic paver finisher (with sensor device) for laying bituminous pavement 7 M size and above'. As per the purchase order dated 02.03.2012 issued to the supplier, the order was placed for 2 Nos. of 'Electronic sensor pave-vogele model super 1800-2 with AB 600-2 TP2 High power compaction for laying bituminous upto 9 Mtrs. width'.

7.4 The goods supplied were the same and on addition of bolt-on extensions, the same can be extended upto 9 M. The said extension is supplied along with the goods and not purchased or supplied separately. The imported paver machines are capable of extending upto 9 M.

7.5 Therefore, the imported goods squarely fall under the description "Electronic paver finisher (with sensor device) for laying bituminous pavement 7 M size and above' and are eligible for the notification benefit.

7.6 There can be no paver machines which can be extended upto 9 M without extensions on bolt, otherwise, the transport of the same would be practically not possible.

7.7 The plain reading of the Notification is that 'Electronic paver finisher (with sensor device) for laying bituminous pavement 7 M size and above'. The only requirement is that the paver machine should be capable of laying pavement of width 7 M and above, and the imported goods are capable of laying pavement of 7 M size and above.

7.8 It is settled principle of interpretation that an Exemption Notification has to be strictly construed and that too on the basis of the language used therein.

7.9 The only requirement under the Notification is that the machine should be capable of laying pavement width of 7 Mtrs. and above and the machines in question are capable of laying pavement width of 7 Mtrs. and above hence, the benefit of the Notification is available to the machines in question.

7.10 It is the capability to pave and not the width of the machine that will determine eligibility to exemption.

7.11 In the instant case, with the addition of bolt on extensions, the screed builds up for joint free paving to a maximum width of 9 Mtrs. Thus, the equipment satisfies

the criteria of laying bituminous pavement 7 M size and above.

7.12 In the proforma invoice it is mentioned as it is continuously extending between 3M-6M and that accessories are supplied along with machine upto 9M.

7.13 The purchase order, proforma invoice and other related documents were submitted to the Apprising officers and only after examining the goods and verifying the documents, the Bill of Entry was assessed and cleared.

7.14 When the machine was inspected on 17.02.2017, the additional bolt-on extension was not added/fixed to the machine. Therefore, the statement of Shri Mufat Singh Rao has to be understood in the above factual context. It is not disputed by the Appellant that without the additional bolt-on extensions, the machine can lay bituminous pavement only upto a width of 5 Mtrs.

7.15 From a cumulative reading of the findings in paragraph 21.3, 21.5 and 22.7 of the impugned Order-in-Original dated 31.10.2018, it is apparent that during the Panchnama proceedings held on 17.02.2017 the additional bolt-on extensions were not present or added to the

machines and this fact has also been acknowledged by the Adjudicating Authority.

7.16 The Adjudicating Authority has admitted that the machine as such can lay pavements upto a width of 5 Mtrs. and that beyond 5 Mtrs. additional bolt-on extension is required. Therefore, it is submitted that the Department cannot now contend based on the Panchnama proceedings dated 17.02.2017 that with the extensions a machine can lay pavement only upto a width of 5 Mtrs.

7.17 Ld. Advocate also submitted that the demand is time-barred and therefore extended period of limitation cannot be invoked. In the absence of conscious or deliberate withholding of information, demand of duty invoking the extended period is not justified as held by the Tribunal in the case of **Plasticraft India Vs CCE** [1991 (52) ELT 84 (Tri.)] which was upheld by the Hon'ble Supreme Court as reported in 1992 (59) ELT A68 (SC).

7.18 The Hon'ble Supreme Court in **Uniworth Textiles Ltd. Vs CCE** [2013 (288) ELT 161 (SC)] held that one who alleged malafide has to prove. It was not on the Assessee.

7.19 The Hon'ble High Court of Patna in the case of **Ahirvad Enterprises Pvt. Ltd. Vs CESTAT** [2013 (288)

ELT 172 (Pat)] has held that mere misstatement/failure to disclose information leading to escapement of duty is not sufficient for invoking longer period. It has to be shown such act was deliberate with intent to evade tax. When there are conflicting decisions on the very same issue, the extended period of limitation cannot be invoked.

7.20 The Hon'ble High Court of Chhattisgarh in the case of **Principal Commissioner Vs SKS Ispat and Power Ltd.** [2018 (14) GSTL J75 (Chhattisgarh)] has held that extended period of limitation cannot be invoked if conflicting decisions existed and the issue has been referred to a Larger Bench.

7.21 The Commissioner relied on the orders of CESTAT Mumbai in the case of **Gammon India Vs CC** [2013 (298) ELT 740] and that of Larger Bench of the Tribunal in the case of **CC (Imports), Mumbai Vs Ramky Infrastruture Ltd.** [2014 (306) ELT 525 (Tri.-LB)] for denying the Notification benefit. Due to conflicting decisions, the issue was referred to the Larger Bench of the Tribunal in the case of **Ramky Infrastructure** (*supra*).

7.22 The facts in the case of **Ramky Infrastructure** (*supra*) are different to the present case as the accessories i.e. bolt-on extension was separately ordered in that case. In the present case, there is only one purchase order for '2 Nos. of Electronic sensor pave-vogele model super 1800-2 with AB 600-2 TP2 high power compaction for laying bituminous upto 9 mtrs width'. Therefore, the ratio of the order in **Ramky Infrastructure** (*supra*) is not applicable to the present issue.

7.23 It was further submitted that in an identical case of **PNC Infratrech Ltd. Vs UOI** [2015 (325) ELT 321 (Mad.)], a writ petition was filed before the Hon'ble High Court of Madras, wherein it was alleged that the Larger Bench of Tribunal has not considered certain aspects and it was prayed before the Hon'ble High Court to direct the Commissioner of Customs (Appeals) to consider the appeal independently and decide the issue on merits without being influenced by any of the findings of the Tribunal at the first instance as well as the Full Bench of the Tribunal. The Hon'ble high Court *vide* its order dated 04.08.2015 had directed the Commissioner (Appeals) to

decide the case independently on its own merits and in accordance with law.

8. *Per contra*, Shri Sanjay Kakkar, Ld. Departmental Representative contended, on merits, that the issue is squarely covered by the decision of the Larger Bench of CESTAT in the case of **Commissioner of Customs (Import) Vs Ramky Infrastruture Ltd. & Ors.** [2014 (6) TMI 615-CESTAT Mumbai (LB)]. He would also contend that the decision in **Ramky Infrascture Ltd**. (*supra*) has been followed in following decisions :

(i) **CC (Import) Vs Vijai Infrastructure Ltd.** [2019 (2) TMI 691-CESTAT Mumbai]

(ii) **CC (Import) Vs Navayuga Engg. Co. Ltd**. [2019 (4) TMI 335 – CESTAT Mumbai]

In view of the above, he submits that the impugned orders requires to be upheld.

9. On the extended period of limitation, Ld. D.R would submit that the there was deliberate omission in the Bill of Entry 7044059 dated 07.06.2012 wherein the description of the goods was declared as '*Electronic Sensor Paver Model Vogele Super 1800-2 with AB 600-2 TP High Power Compaction'.* The above description clearly did not indicate the machine's built-in paving width, nor was there any

mention about the requirement of separate external additions to reach a wider size. Drawing our attention to proforma invoice, he would contend that the description mentioned in the said invoice effectively hid the fact the underlying equipment did not inherently meet the notification's specific size requirements since same was described as 'laying bituminous pavement upto 9.0 mts.'

9.1 Relying on the decision of **CCE Vs Metal Box India Ltd.** [2005 (181) ELT 149 (SC)], he would contend that withholding specialized product details from Customs authorities formed a valid basis for invoking the extended period of limitation and in this context, he would contend that the Appellant was fully aware of the basic configuration of paver that was imported and also the fact that only by blending the main machine the description with its optional attachments could paver reach the width of 9.0 Mtrs. It is thus his case that the Appellant knowingly declared a false capability of the machine imported by them and therefore, the exemption claimed by them has been correctly denied.

10. He would invite our attention to the decision of Larger Bench in **Ramky Infrascture Ltd**. (*supra*), specifically paragraphs 8 & 10 which read as under :

> **"8.** Now, the issue before us is whether the machines in question fulfil the criteria laid down under the Notification. The only contention of the present respondents is that with the addition of bolt-in extensions, the machine in question is capable of laying bituminous pavement of 7 meters size and above. From the purchase order and from the packing list, we find that the accessories i.e. bolt-on extensions were separately ordered. In a situation when bolt-on extensions are not imported, the relevant question would then be whether the machines still qualify for exemption under Notification 21/2002. Certainly, the benefit of the Notification is not available to such machine. In other instance, when the machine has been imported with accessories, whether the benefit of the Notification is available. The mere import of the accessories with the machine cannot change the basic character of the machine. As per the Webster New International Dictionary, accessory is 'an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else'. We find that the machine in question is complete in itself without the accessories.
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> ... ...
>
> **10.** In the present case, as we find that as per the product literature, the machines in question are capable of laying bituminous pavement from 3 meters to 6 meters i.e. less than 7 meters, therefore we find no reason to take a different view as in the case of *Gammon India Ltd.* (supra). The matter be placed before the regular Bench for further necessary orders."

11. Rebutting the contentions of the Ld. Advocate that the decision of the Larger Bench in **Ramky Infrascture Ltd**. (*supra*) has not attained finality, he would submit that while ordering notice, the Hon'ble Supreme Court has specifically held 'no stay' and hence, he would contend that the decision of the Larger Bench is required to be applied.

12. We have heard the rival contentions and perused the documents placed on record and also the judicial pronouncements relied upon and referred to during the course of arguments. Upon hearing both the parties, the following issues arise for our consideration :

(i) Whether the Appellant was correct in claiming the benefit of Exemption Notification No.12/2012-Cus. dated 17.03.2012 [Sl.No.368] and

(ii) Whether the Appellant has made out a case for our intervention on the extended period of limitation ?

13. Though we wanted to reproduce the Bill of Entry in question to make it part of our order but however, since the copy of the Bill of Entry filed before us was not clear, and hence, we are not reproducing the same.

In the synopsis filed by during the course of arguments, under the caption 'Grounds of Appeal', the Appellant has contended that '……. *it is mentioned as it is continuously extending between 3M-6M and that accessories are supplied along with the machine upto 9M.'* We find that the Proforma Invoice is part of the relied upon document (RUD) by the Revenue, a copy of the same is also filed by the Appellant in its additional paper book along with typed copy of the same. For our ready reference, the typed version of the Proforma Invoice as at page 4A which is part of the paper book is reproduced as under :

PROFORMA INVOICE

FOR

Electronic Sensor paver-VOGELE Model Super 1800-2 with AB600-2 p2 High Power compaction screen for laying bituminous pavement up to 9.0 Mts. Width:

- Mounted on crawlers provided with rubber pads
- Powered by water-cooled perkins diesel engine type 1106 D-e 0.5TA rated at 130 kw
- Separate Hydrostate drives are provided for :
  - Left & right side
  - Left and right side
  - Left end right side
  - Electro-hydraulic tow point control

- Folding hepper sides, left and right side
- Lifting up screed for travel/transport

Separate driver and control provided for each crawler. shifting from paver mode to paver mode is electric. Drive units hanged to the crawler sprockets from transmission of power without chains. Electronic differential provided for both straight motion : integrated Multiple-disc brake locked on Automatically without oil pressure.

From the Proforma Invoice we do not find any description as urged in the synopsis under the caption 'Grounds of Appeal' extending or expanding of any supply of accessories along with the machine in question.

14. Panchanama drawn on 17.02.2017 indicates that the machine was having minimum paving width of 2.25 Mtrs. which could be extended upto 5.0 Mtrs. with the help of Hydraulic cylinder. Further, no additional member was found connected with the machine. To this, ld. Advocate contended that statement of Shri Mufat Singh Rao has to be understood to mean that without the additional bolt-on extensions, the machine could lay bituminous pavement only upto width of 5 Mtrs. It thus gives us an impression that the very capacity or the capability of the machine in question is a width of 5 Mtrs. and nothing beyond it.

15. Sl. No.368 of Exemption Notification No.12/2012-Cus. dated 17.03.2012 reads as under :

TABLE

S.No.	Chapter or Heading or Sub-heading of tariff item	Description of goods	Standard Rate	Additional duty rate	Condition No.
338	84 or any other Chapter	Goods specified in List 16 required for construction of roads	Nil	Nil	9

List 16 (See S.No.368 of the Table)

(1) ….

(2) Electronic paver finisher (with sensor device) for laying bituminous pavement 7 m size and above.

…… ….

A plain reading of the above indicates that capacity of Electronic paver finisher for laying bituminous pavement of 9 M size which is the minimum and clearly the same is without any attachments to increase or extend its capacity or capability. Hence, to accept the contention of the Appellant that with the bolt-on extensions, the machine in question gets covered under the Notification and that the bolt-on extensions i.e. nuts and bolts as

required were also supplied by the foreign supplier, is very difficult. If it was the intention of the legislature to give the benefit wherever the minimum capacity is extended using extensions i.e. nuts and bolts, the same would have found a place in the Notification and hence, to insert something which is not there is not our job and nor do we accept such pleadings. In fact, the Apex Court in the case of **CC (Import) Mumbai Vs M/s. Dilip Kumar & Company** [2018 (361) ELT 577 (SC)] has categorically held that whenever a benefit of Exemption Notifications sought to be availed, the burden is on such Assessee to prove that it complied with the conditions prescribed in such notifications and when there being any scope for any intendments.

16. The Appellant has seriously contended that its purchase order was only for '*2 Nos. of Electronic Sensor Paver-Vogele Model Super 1800 with AB-600-2 TP2 High power compaction for laying bituminous pavement up to 9.0 Mts. Width*'. But, what was supplied was the machine that could lay bituminous only upto a width of 5 Mtrs. but the same was supplied along with additional bolt-on extensions so that a width upto 9 Mtrs. could be achieved.

17. It is the settled position of law that for the purpose of duty levy, the item as presented at the time of importation is relevant and any variance between the purchase order and the item/s received is required to be flagged at the first available opportunity without waiting for any notice, but in any case it is between the parties to settle this issue and the Department cannot be fastened with the responsibility of any such issue raised, when a demand is proposed. Here in this case however, the Appellant precisely took the alibi, after receiving the Notice, that what was ordered was one thing but was received was different.

18. In the synopsis the Appellant has referred to a decision of the Madras High Court in the case of **PNC Infratech ltd. Vs Union of India** (*supra*) wherein, the Hon'ble High Court has felt it proper to remit the matter back to the file of the Adjudicating Authority to decide the issue on merits without being influenced by the Larger Bench in the case of **Ramky Infrascture Ltd**. (*supra*) and the Appellant has merely quoted the above decision without any specific prayer in this regard. With utmost

respect, we do not intend to give any finding contrary to the above decision.

19. In view of the above discussions, we are of the clear view that the Notification benefit as denied by the Commissioner is perfectly in order since what is relevant is as to what reached the Indian territory upon import.

20. In so far as the extended period of limitation is concerned, we find that there is serious lapse as to the description in the Bill of Entry and the capability of the machine in question has not been specifically mentioned. In any case, if there was any dispute it is purely *inter se* the parties and the Department is only interested in what was imported as reflected in the documents and nothing else. Hence, there is clear misdeclaration for which the extended period of limitation has been correctly invoked by the Department. Hence, in so far as the 1st Appellant is concerned, we do not find any infirmity in the impugned order.

21. In so far as the personal penalty on the Director (2nd Appellant) is concerned however, we do not subscribe

to the reasons attributed in the impugned order since there is no specific allegation against the 2nd Appellant as to his role in misdeclaration. We also do not find any specific discussion in the impugned order as to how the act or omission on the part of the 2nd Appellant that resulted in the above misdeclaration and hence, the penalty imposed on the 2nd Appellant is clearly unsustainable which stands deleted. Ordered accordingly.

22. In view of the above, the impugned order is otherwise upheld except modifying to the extent of deleting the personal penalty imposed on the 2nd Appellant. In the result, Appeal No.C/40710/2019 by 1st Appellant is dismissed. Appeal No.C/40711/2019 by 2nd Appellant is partly allowed by deleting the penalty.

Appeals are disposed of on above terms.

((Order pronounced in open court on 25.09.2026)

sd/-
(M. AJIT KUMAR)
Member (Technical)

sd/-
(P. DINESHA)
Member (Judicial)

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