2026:DHC:6828-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Judgment reserved on: 29.07.2026***
Judgment pronounced on: 19.08.2026
Judgment uploaded on: 19.08.2026

\# **CNR No. DLHC010214912023**

\+ CUSAA 43/2023
BAKER HUGHES OILFIELD SERVICES INDIA PVT LTD
.....Appellant
Through: Mr. Tarun Gulati, Sr. Adv. Mr. Tushar Joshi, Ms. Daliya Singh, Advs.

versus

CUSTOMS AUTHORITY FOR ADVANCE RULINGS AND ANR .....Respondents
Through: Mr. Harpreet Singh, SSC.

\# **CNR No. DLHC010346182023**

\+ CUSAA 62/2023
BAKER HUGHES SINGAPORE PTE .....Appellant
Through: Mr. Tarun Gulati, Sr. Adv. Mr. Tushar Joshi, Ms. Daliya Singh, Advs.

versus

CUSTOMS AUTHORITY FOR ADVANCE RULINGS AND ANR .....Respondents
Through: Mr. Harpreet Singh, SSC.

\# **CNR No. DLHC010346452023**

\+ CUSAA 63/2023
BJ SERVICES COMPANY MIDDLE EAST LTD
.....Appellant
Through: Mr. Tarun Gulati, Sr. Adv. Mr. Tushar Joshi, Ms. Daliya Singh, Advs.

versus

CUSTOMS AUTHORITY FOR ADVANCE RULINGS AND ANR .....Respondents

Through: Mr. Harpreet Singh, SSC.

\# **CNR No. DLHC010351202023**

\+ CUSAA 66/2023 and CM APPL. 45997/2023

M/S HALLIBURTON OFFSHORE SERVICES INC .....Appellant

Through: Mr. Prakash Shah, Sr. Adv. Mr. Rajat Mittal, Mr. Mohit Raval, Mr. Mihir Mehta and Mr. Subham Kumar, Mr. Priyanshu, Advs.

versus

CUSTOMS AUTHORITY FOR ADVANCE RULINGS AND ANR .....Respondents

Through: Mr. Harpreet Singh, SSC.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

A. INTRODUCTION:

1. The present batch of four Appeals arise from four distinct Advance Rulings rendered by the Respondent No.1 under Section 28-H of the Customs Act, 1962 [hereinafter referred to as 'Act of 1962'], each determining the eligibility of the Appellants to claim exemption under Serial No.5 of the Notification No. 45/2017-Cus. dated 30.06.2017 [hereinafter referred as 'NN-45'] in respect of movement of equipment, to be deployed in petroleum operations, from a Special Economic Zone (SEZ)/Free Trade Warehousing Zone (FTWZ) to the Domestic Tariff Area (DTA).

2. Since the Appeals emanate from a similar *lis,* they are being disposed of by this common judgment, with the consent of learned counsel for the parties, treating CUSAA 43/2023 as the lead matter.

3. By way of the Impugned Rulings, Customs Authority for Advance Rulings, New Delhi (CAAR/Respondent No.1), answered the question referred to it in the negative holding that the Appellants are not entitled to claim exemption from payment of Basic Customs Duty, Integrated Goods and Services Tax (IGST) and compensation cess under NN-45, on clearance into DTA of equipment earlier sent by the Appellant from DTA to a FTWZ.

B. BRIEF BACKGROUND:

4. Pithily put, the Appellant is a service provider engaged in rendering technical mining and allied support services, in a capacity of a sub-contractor, to oil and gas exploration and production companies in India, including Oil and Natural Gas Corporation (ONGC) and Cairn India (contractors). In order to render the aforesaid services, the Appellant had proposed to undertake a commercial arrangement in the manner set out hereinafter.

Proposed modus operandi

5. Before adverting to the *modus operandi* proposed to be adopted by the Appellant, we deem it appropriate to reproduce the relevant excerpt of Notification no.50/2017 Cus. dated 20.06.2017 [hereinafter referred to as 'NN-50'] and NN-45 dated 30.06.2017, which lies at the heart of the present controversy, that are as follows:

NN-50

G.S.R. 785(E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act. 1962 (52 of 1962) and sub-section (12) of section 3, of Customs Tariff Act, 1975 (51 of 1975), and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 12/2012 -Customs, dated the 17th March. 2017 published in the Gazette of India. Extraordinary, Part II. Section 3, Sub-section (i), vide number G.S.R. 185(E) dated the [17th March. 2012], except as respects things done or omitted to be done before such supersession, the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods of the description specified in column (3) of the Table below or column (3) of the said Table read with the relevant List appended hereto, as the case may be, and falling within the Chapter, heading, subheading or tariff item of the First Schedule to the said Customs Tariff Act, as are specified in the corresponding entry in column (2) of the said Table, when imported into India,-

(a) from so much of the duty of customs leviable thereon under the said First Schedule as is in excess of the amount calculated at the standard rate specified in the corresponding entry in column (4) of the said Table; and

(b) from so much of integrated tax leviable thereon under sub-section (Z) of section 3 of said Customs Tariff Act, read with section 5 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) as is in excess of the amount calculated at the rate specified in the corresponding entry in column (5) of the said Table, subject to any of the conditions, specified in the Annexure to this notification, the condition number of which is mentioned in the corresponding entry in column (6) of the said Table:

Table

S. No.	**Chapter or heading or sub-heading or tariff item**	**Description of goods**	**Standard rate**	**Integrated Goods and Services Tax**	**Condition No.**
404	[27, 29, 31, 38, 39, 73, 82, 84, 85, 97, 89 or 90]	Goods specified in column (3) of List 33 when imported by a specified person, in relation with	NIL	[12%]	48]

		petroleum operations or coal bed methane operations undertaken under: (a) petroleum exploration licenses or mining leases (b) the New Exploration Licensing Policy (c) the Marginal Field Policy (MFP) (d) the Coal Bed Methane Policy (e) the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP) Explanation.- - For the purposes of this notification, a specified person is a licensee, lessee, contractor or sub-contractor, as defined below:- (i) “licensee’ means a person authorised to prospect for mineral oils			

		(which include petroleum and natural gas) in pursuance of a petroleum exploration license granted under the Petroleum and Natural Gas Rules, 1959 made under the provisions of the Oilfields (Regulation and Development) Act, 1948(53 of 1948) (ii) 'lessee means a person authorised to mine oils (which include petroleum and natural gas) in pursuance of a petroleum mining lease granted under the Petroleum and Natural Gas Rules, 1959 made under the provisions of the Oilfields (Regulation and Development) Act, 1948(53 of 1948) (iii) 'contractor' means a company (Indian or foreign) or a consortium of companies with which the Central Government has			

		entered into an agreement in connection with petroleum operations (consisting of prospecting for or extraction or production of mineral oils) to be undertaken by such company or consortium (iv) 'sub-contractor' means a person engaged by licensee/lessee or contractor for the purpose of conducting petroleum operations on behalf of such licensee/lessee or contractor, as the case maybe			

Condition No. 48-

If -

(a) the importer is a licensee or lessee or contractor, he shall produce to the concerned Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, a document evidencing that he falls in the category of a specified person and give an undertaking to pay duty, fine or penalty that becomes payable, if any of the Conditions of this notification are not complied with;

(b) the importer is a sub-contractor, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, a certificate issued by a senior official who is authorised by the Board of Directors to issue such a certificate, of the concerned licensee or lessee or contractor certifying that the goods are intended for specified purpose along with an undertaking from such licensee or lessee or contractor and the subcontractor, as the case may be, liable to pay duty, fine or penalty that becomes payable, if any of the Conditions of this notification are not complied with;.

(c) the importer or any specified person {transferor), seeks to transfer the goods to any other specified person {transferee),-

(i) the transferor shall give an intimation to the concerned Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, about such transfer and get himself discharged in respect of the goods so transferred;

(ii) the transferee shall give an undertaking to comply with the Conditions of this notification, as if he is the importer of these goods.

(iii) where the transferee is a sub-contractor, the lessee or the lesser or the licensee or the contractor of such sub-contractor, as the case maybe, shall also give an additional undertaking to make himself liable to pay duty, fine or penalty in case the sub-contractor fails to comply with the Conditions of this notification;

(d) the goods so imported are sought to be disposed after their use in unserviceable form or as scrap, the importer or the transferee, as the case may be, shall dispose of these goods, through MSTC, or any other Government agency, notified by the Central Government for this purpose, by paying a duty at the rate of 7.5% of the transaction value of such goods.

Explanation.- For the purposes of this Condition, goods imported on or before the 1st day of February, 2022, claiming concessional rate of duty, either under this Condition or any preceding exemption for such goods, are to be disposed off on or after 2nd day of February, 2022, may be disposed off in accordance with clause (d) of this Condition.]

<u>NN-45:</u>

*“**G.S.R. 780 (E).**-In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table below when re- imported into India, from so much of the duty of customs leviable thereon which is specified in the said First Schedule, and the 1[***], integrated tax , compensation cess leviable thereon respectively under sub-section (7) and (9) of section 3 of the said Customs Tariff Act, as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.*

Table

Sl.No.	***Description of goods***	***Conditions***
(1)	***(2)***	***(3)***
1	*Goods exported- (a) under claim for of any drawback customs or excise*	*amount of drawback of customs or excise duties allowed at the time of export;*

	duties levied by the union	
	(b) under claim for drawback of any excise duty levied by a state	*amount of excise duty leviable by state at the time and place of importation of the goods. allowed at the time of export;*
	(c) under claim for refund of integrated tax paid on export goods	*amount of refund of integrated tax, availed at the time of export;*
	(d) under bond without payment of integrated tax	*amount of integrated tax not paid;*
	(e) under duty exemption scheme (DEEC/ advance authorisation/ DFIA) or export promotion capital goods scheme (EPCG)	*amount of integrated tax and compensation cess leviable at the time and place of importation of goods and subject to the following conditions applicable for such goods* *(i) DEEC book has not been finally closed and export in question is de-logged from DEEC book; advance authorisation/DFIA has not been redeemed and the authorisation holder has not been discharged from the export obligation by DGFT;* *(ii) in case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding reimport have been made;* *(iii) the importer had intimated the details of the consignment re-imported to the assistant commissioner of customs or deputy commissioner of customs in charge of the factory where the goods were manufactured or the premises from where the goods were supplied and to the licensing authority regarding the fact of*

		reimportation and produces a dated acknowledgement of such intimation at the time of clearance of goods; *(iv) the manufacturer-exporters may be permitted clearance of such goods without payment of central excise duty or integrated tax and compensation cess under transit bond to be executed with the customs authorities at the port of importation, such bond will be cancelled on the production of certificate issued by the jurisdictional customs authority about receipt of reimported goods into their factory or the premises from where the goods were supplied.*
2	*Goods, other than those falling under Sl. No. 1 exported for repairs abroad*	*Duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred for not), insurance and freight charges, both ways.*
3	*Cut and polished precious and semi-precious stones exported for treatment abroad as referred to in paragraph 4a.20.1 of the foreign trade policy, other than those falling under Sl. No. 1.*	*Duty of customs which would be leviable if the value of re-imported precious and semiprecious stones after treatment were made up of the fair cost of treatment carried out including cost of materials used in such treatment, whether such costs are actually incurred for not, insurance and freight charges, both ways.*
4	*Parts, components of aircraft replaced or removed during the course of maintenance, repair nil or overhaul of the aircraft in*	*Nil*

	a special economic zone and brought to any other place in india. ***Explanation:-*** *For the purpose of this notification, "Special Economic Zone" has the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005)*	
5	*Goods other than those falling under Sl. No. 1, 2, 3 and 4*	*Nil*

Provided that the Assistant Commissioner of Customs/ Deputy Commissioner of Customs is satisfied that-

(a) in the case of Bhutan, the machinery and equipment other than those exported under Duty Exemption Scheme (DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme(DEPB) or any reward scheme of Chapter 3 of Foreign Trade Policy are re-imported within seven years after their exportation or within such extended period, not exceeding three years, as may be allowed by the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay;

(b) in all other cases, the goods other than those exported under Duty Exemption Scheme(DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme(EPCG) or Duty Entitlement Passbook Scheme (DEPB) or any reward scheme of Chapter 3 of Foreign Trade Policy are re-imported within three years after their exportation or within such extended period, not exceeding two years, as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay may be allowed;

(c) in the case of goods exported under the Duty Exemption Scheme (DEEC/Advance Authorisation/DFIA) or Export Promotion Capital Goods Scheme(EPCG) or Duty Entitlement Passbook Scheme (DEPB) or any reward scheme of Chapter 3 of Foreign Trade Policy, re-importation of such goods takes place within one year of exportation or such extended period not exceeding one more year as the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, on sufficient cause being shown for the delay may be allowed;

(d) the goods are the same which were exported;

(e) in the case of goods falling under Sr. No. 2 of the Table there has been no change in ownership of the goods between the time of export of such goods and re-import thereof;

(f) in the case of the goods falling under Serial numbers 1 and 3 of the Table and where the value of exported goods was counted towards fulfillment of export obligation, the amount of customs duties leviable on the duty-free inputs obtained from Nominated Agencies but for the exemption availed under the Ministry of Finance (Department of Revenue) notification No. 56/2000-Customs dated the 5th May, 2000 [vide G.S.R. 399 (E), dated the 5th May, 2000] and notification No. 57/2000-Customs dated the 8 th May, 2000 [vide G.S.R. 413 (E), dated the 8th May, 2000] shall also be paid in addition to amount of duty specified in column (3) of the Table;

(g) in the case of goods falling under Sl. No. 4 of the Table, the goods are returned to the owner of the aircraft without any sale;

Provided further that nothing contained in this notification shall apply to re-imported goods

(a) which had been exported by a hundred percent, export-oriented undertaking or a unit in a Free Trade Zone as defined under section 3 of the Central Excise Act, 1944 (1 of 1944);

(b) which had been exported from a public warehouse or a private warehouse appointed or licensed, as the case may be, under section 57 or section 58 of the Customs Act, 1962 (52 of 1962);

(c) which fall under the Fourth Schedule to the Central Excise Act, 1944 (1 of 1944).

2. This Notification will apply to the exports for which order permitting clearance and loading under section 51 of the Customs Act, 1962, has been given on or after 01st day of July, 2017.

3. This notification shall come into force with effect from the 1 st day of July, 2017.

Explanation. - For the purposes of this notification, -

(a) the goods shall not be deemed to be the same if these are re-imported after being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad.;

(b) Foreign Trade Policy' means Foreign Trade Policy, 2015 - 2020 notified by the Government of India in the Ministry of Commerce and Industry published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii) vide notification No. 01/2015-2020, dated the 1st April, 2015;

(c) 'Nominated agencies' means,-

(i) Metals and Minerals Trading Corporation Limited (MMTC);

(ii) Handicraft and Handloom Export Corporation (HHEC);

(iii) State Trading Corporation (STC);

(iv) Project and Equipment Corporation of India Ltd. (PEC); (v) STCL Ltd;

(vi) MSTC Ltd;

(vii) Diamond India Limited (DIL);

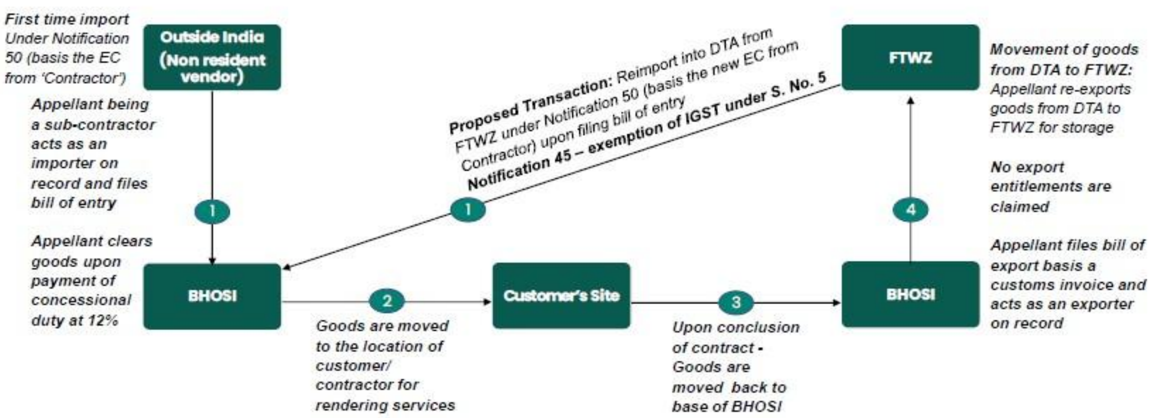
(viii) Four Star Export House from Gems & Jewellery sector and Five Star Export House from any sector as may be recognised as nominated agencies by Regional Authority in terms of the Foreign Trade Policy; (ix) any bank as authorised by Reserve Bank of India as Nominated Agency.

(F. No. 354/119/2017-TRU)

(Ruchi Bisht)
Under Secretary to the Government of India"

6. The Appellant in its Appeal has attached a chart depicting the *modus operandi* adopted with respect to the proposed movement of equipment, which is reproduced hereunder:

ANNEXURE-7



7. It is the case of the Appellant that, in its capacity as a sub-contractor, it imports specialised equipment from outside India at a concessional rate of duty, with BCD at NIL and IGST at 12%, under NN-50, against the Essentiality Certificate (EC) issued by the respective Contractors. It is claimed to be undisputed that the

equipment will, at all times, remain under the ownership and operational control of the Appellant.

8. Against this backdrop, it has been the case of the Appellant that, upon completion of the contract for which an EC has been issued, if the Appellant foresees a need for the very same equipment in a subsequent, yet-to-be-identified contract, instead of exporting the equipment out of India altogether, it will send the equipment, without any manufacturing or processing to a Logistics Service Provider (LSP) situated within FTWZ, for safe keeping until a fresh contract is materialised. No duty drawback, rebate or other export incentive is claimed by the Appellant on this movement from DTA to FTWZ.

9. Subsequently, as and when, a new contract is secured and a fresh EC is issued by the new Contractor, the Appellant proposes to clear the very same equipment, in the same form, from FTWZ back into DTA, while paying the concessional rate of duty under NN-50 and by claiming the benefit of residuary exemption under NN-45.

Case of the Appellant before CAAR

10. It was against the aforesaid factual matrix, and it bears emphasis that the activity was, at the relevant time, a proposed and not an ongoing one, that the Appellant sought an Advance Ruling on the following question: "Whether the applicant is eligible to claim exemption from payment of customs duty, IGST and compensation cess on re-import of equipment from SEZ/FTWZ into DTA as per NN-45, considering the fact the equipment is the same that were brought from DTA earlier and admitted into SEZ/FTWZ"?

Case of the Respondent No.2 before the CAAR

11. The jurisdictional Commissioner of Customs, NS-General, Nhava Sheva, in comments furnished to CAAR, opposed the Appellant's claim principally on the ground that the second proviso to NN-45 excludes from its ambit goods that have been exported by 100% export-oriented undertaking or a unit in a FTWZ, and that the movement contemplated by the Appellant, of equipment cleared by FTWZ unit into DTA, squarely attracts that exclusion. The Commissioner further took the position that mere temporary holding of goods by FTWZ unit cannot be equated with compliance of the condition of "export" for the purpose of NN-50, so as to permit a subsequent "re-import" for the purpose of NN-45.

Observations made by CAAR

12. CAAR, after considering the rival contentions and hearing the Authorised Representatives of the Appellant, ruled against the Appellant. The reasoning of CAAR, in substance, was as follows:

i. the concessional duty benefit under NN-50 is conditional upon compliance with the conditions prescribed therein, and non-fulfilment thereof would attract liability for differential duty, interest, fine and penalty. The requirement for re-export of the equipment arose from the contractual arrangement between the Appellant and its contractors and was not a condition of NN-50. Accordingly, the Appellant could not introduce the concepts of "export", "re-export" and "re-import" to bring the transaction within NN-45, particularly when neither Notification contemplates such a construct.

ii. NN-45 presupposes that the goods have first been exported, and mere warehousing of goods in SEZ/FTWZ does not satisfy this requirement. Under Sections 2(m) and 2(o) of the Special Economic Zones Act, 2005 [hereinafter referred to as 'Act of 2005'], "export" and "import" have distinct statutory meanings and cannot be used interchangeably. While movement of goods from DTA to SEZ/FTWZ constitutes "export", movement from SEZ/FTWZ to DTA does not constitute "import" or "re-import" under the Act of 2005 or the Customs Act, 1962 [hereinafter referred to as 'Act of 1962']. Such movement also cannot be treated as "procurement" by FTWZ Unit, since, under Rule 18(5) of the Special Economic Zones Rules, 2006 [hereinafter referred to as 'Rules of 2006'], the Unit merely holds the goods on behalf of the owner for subsequent dispatch.

iii. in terms of Rule 18(5) of the Rules of 2006, when the goods are dispatched from FTWZ to DTA, they are regarded as having been exported by FTWZ Unit. Consequently, the second proviso to NN-45, which excludes goods exported by a Unit in FTWZ from the exemption, would independently render NN-45 inapplicable.

iv. Rule 48(3) of the Rules of 2006, which refers to "re-imported goods", was held to be only a procedural deeming provision and incapable of altering the substantive statutory meaning of "import" or "re-import" under the Act of 2005 and the Act of 1962.

v. Lastly, it was observed that CBIC Circular No. 21/2019-Customs dated 24.07.2019 [hereinafter referred to as 'Circular of 2019'], relied upon by the Appellant, was issued in the context of goods exported abroad for exhibition or on a consignment basis and, under Paragraph No.5 thereof, applied only to similarly placed exporters/importers. The Appellant's proposed arrangement of warehousing the equipment in FTWZ pending a fresh contract was materially different and, therefore, the Circular could not be extended to the transaction. Accordingly, the benefit of NN-45 was held to be unavailable.

13. Aggrieved thereby, the Appellant has now approached this Court in Appeal, seeking to challenge the correctness of the Impugned Ruling rendered by the Respondent No.1.

14. This Court has heard learned senior counsel for the parties at length and with their able assistance perused the paper book.

C. SUBMISSIONS ON BEHALF OF THE PARTIES

15. Before turning to the submissions advanced by the learned counsel, this Court deems it appropriate to reproduce relevant provisions of the Statues forming basis of the arguments, which are as follows:

> ***"Act of 1962***
>
> ***2. Definitions.****—In this Act, unless the context otherwise requires,—*
>
> *(23) —import, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;*
>
> ***20. Re-importation of goods.—****If goods are imported into India after exportation therefrom, such goods shall be liable to duty and be subject to all the conditions and restrictions, if any, to which goods of*

the like kind and value are liable or subject, on the importation thereof:

Act of 2005

7. Exemption from taxes, duties or cess.*—Any goods or services exported out of, or imported into, or procured from the Domestic Tariff Area by,—*

(i) a Unit in a Special Economic Zone; or

(ii) a Developer, shall, subject to such terms, conditions and limitations, as may be prescribed, be exempt from the payment of taxes, duties or cess under all enactments specified in the First Schedule.

30. Domestic clearance by Units.*—Subject to the conditions specified in the rules made by the Central Government in this behalf,—*

(a) any goods removed from a Special Economic Zone to the Domestic Tariff Area shall be chargeable to duties of customs including anti-dumping, countervailing and safeguard duties under the Customs Tariff Act, 1975 (51 of 1975), where applicable, as leviable on such goods when imported; and

(b) the rate of duty and tariff valuation, if any, applicable to goods removed from a Special Economic Zone shall be at the rate and tariff valuation in force as on the date of such removal, and where such date is not ascertainable, on the date of payment of duty.

53. Special Economic Zones to be ports, airports, inland container depots, land stations, etc., in certain cases.*—A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorised operations.*

(2) A Special Economic Zone shall, with effect from such date as the Central Government may notify, be deemed to be a port, airport, inland container depot, land station and land customs stations, as the case may be, under section 7 of the Customs Act, 1962 (52 of 1962): Provided that for the purposes of this section, the Central Government may notify different dates for different Special Economic Zones.

Rules of 2006

23. *Supplies from the Domestic Tariff Area to a Unit or Developer for their authorized operations shall be eligible for export benefits as admissible under the Foreign Trade Policy.*

48. Procedure for Sale in Domestic Tariff Area.-

(3) Where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods and shall be subject to such procedure and conditions as applicable in the case of normal re-import of goods from outside India:"

Submission on behalf of the Appellant:

16. Learned senior counsel representing the Appellant, assailed the Impugned Ruling essentially on the following grounds:

16.1 At the outset, learned senior counsel contends that, for claiming exemption under NN-45, the Appellant is only required to establish that the goods have been brought into India again. Reliance is placed on Section 20 of the Act of 1962, which recognises re-importation as a fresh import, therefore, once goods are brought into India for the second time, such transaction assumes the character of a re-import. Since the taxable event is the movement of goods across the customs frontiers, the subsequent entry of the same goods into India constitutes a re-import.

16.2 It is contended that Sections 30 and 53 of the Act of 2005 reinforce the aforesaid position by deeming SEZ, including FTWZ, to be outside the customs territory of India and treating clearance of goods therefrom to DTA as import, with customs duties leviable as on imported goods. Thus, where goods are first imported into India, moved from DTA to SEZ/FTWZ and thereafter returned to DTA, the outward movement constitutes an "export", and the return movement necessarily constitutes an "re-import". These two limbs of the statutory fiction cannot be separated.

16.3 Reliance is also placed on Rules 23 and 48(3) of the Rules of 2006, under which DTA-to-SEZ movement is treated as export and goods procured from DTA and subsequently supplied back to DTA, with or without substantial processing, are expressly treated as "re-imported goods", subject to the procedure and conditions applicable to normal re-imports. Accordingly, the CAAR's reliance on the separate statutory meanings of "import" and "procure" under the Act of 2005 is contended to be artificial and contrary to Rule 48(3) of the Rules of 2006.

16.4 Further, learned senior counsel also relies on Section 30 of the Act of 2005 and the decisions in ***Roxul Rockwool Insulation India Pvt. Ltd. v. Union of India***[1] and ***Adani Power Ltd. v. Union of India***[2], to contend that clearance from SEZ to DTA is treated as an import for purposes of customs duty. Further, "import" under Section 2(23) of the Act of 1962 encompasses re-importation, which is chargeable under Section 20. Therefore, the goods, qualify for the residuary exemption under S.No.5 of NN-45.

16.5 Raising specific challenges against the Impugned Ruling, it is argued that Respondent No.1 erroneously relied upon NN-50, whereas the issue concerns only NN-45. The findings in paragraph Nos.10.2 and 10.3, distinguishing warehousing from

[1] 2015 (320) E.L.T. 554 (Guj.)
[2] 2015 (330) E.L.T. 883 (Guj.)

export and relying on Section 7 of the Act of 2005, are therefore irrelevant. Additionally, it is contended that Paragraph no.10.6 merely reproduces Rule 48(3) without considering its effect or identifying any provision disentitling the Appellant from the exemption.

16.6 Further, it is contended that the SEZ scheme creates a deemed foreign territory within India to facilitate trade and extend corresponding fiscal and import-related treatment. Requiring fresh IGST at 12% whenever the same equipment is cleared from FTWZ to DTA would result in repeated taxation, defeating the concessional scheme under NN-50, and place goods routed through SEZ/FTWZ in a worse position than goods directly imported from abroad.

16.7 Reliance is placed on Circular of 2019, which, according to the Appellant, recognises that goods moved outside India without a supply or export incentive may claim the residuary exemption under Serial No. 5 of NN-45 upon subsequent re-import. Accordingly, the Appellant contends that return of the equipment from FTWZ to DTA constitutes re-import eligible for NN-45.

16.8 Lastly, it is contended that, although the contractual arrangement requires return of the equipment upon completion of a project, where deployment under another domestic contract is foreseeable, physical export and subsequent re-import would entail unnecessary logistical costs. Therefore, temporary storage in SEZ/FTWZ is only a logistical arrangement until the next deployment.

17. Mr. Prakash Shah, learned senior counsel representing the Appellant in CUSAA 66/2023, while supplementing the aforesaid submissions, laid particular emphasis on Section 30 of the Act of 2005 and made the following submissions:

17.1 He submits that the aforesaid provision creates a statutory fiction that goods cleared from SEZ to DTA are to be treated as if imported into India and shall be chargeable to duties as if they are imported into India. It is his case that the expression, "when imported", employed therein, not only incorporates the charging provision but the entire customs regime, including the applicable tariff rates as well as exemption notifications issued under the Act of 1962.

17.2 It was, therefore, contended that once the legislature mandates that clearance of goods from SEZ to DTA is to be treated as an import into India, the movement of goods which had already been imported into India once before and are thereafter brought back from SEZ/FTWZ to DTA would necessarily constitute a re-import, thereby attracting the benefit of NN-45.

<u>Submission on behalf of the Respondents:</u>

18. *Per contra*, learned counsel representing the Respondents, controverting the submissions made by learned senior counsels, has made the following submissions:

18.1 It is contended that the proposed transaction is a fresh import, not a re-import since the equipment was originally imported under NN-50 at concessional duty against an EC valid only for six months and linked to a specific contract. Once that contract ends and the equipment is exported to SEZ/FTWZ, the original transaction is complete. Therefore, its subsequent DTA clearance under a fresh EC for a new contract is a fresh transaction, and the Appellant cannot claim exemption merely because IGST was paid on the original import or invoke legislative intent contrary to NN-45.

18.2 Under the SEZ Act, DTA-to-SEZ movement is an export, but SEZ-to-DTA movement is neither an "import" nor a "procurement" for the purposes relied upon by the Appellant. Hence, the reverse movement cannot automatically be characterised as a re-import.

18.3 It is contended that reliance placed on Rule 48(3) of the Rules of 2006 does not support the Appellant. The goods are exported to FTWZ for warehousing to satisfy the original EC condition, and the export is complete once they enter FTWZ. Therefore, a subsequent clearance into DTA under a fresh contract is a new transaction and not a re-import.

18.4 Reliance placed by learned senior counsel for the Appellant, on the Circular of 2019 has also been distinguished, inasmuch as the said Circular concerns goods exported for exhibition or on consignment basis and cannot be extended to goods merely warehoused in FTWZ pending identification of another contract.

18.5 Further, it is contended that there is no recognised LSP under FTWZ regime. FTWZs only comprise of Warehousing and Trading Units which may hold goods for foreign clients under Rule 18(5) of the Rules of 2006 and for Indian clients under Instruction No.60 issued by Ministry of Commerce & Industry. Such units merely hold goods for dispatch on the owner's instructions and do not “procure” them under the SEZ Act.

18.6 It is his case that the temporary holding in FTWZ cannot be treated as fulfilment of the original export condition or as re-import under NN-45. The Appellant cannot rely on the statutory export fiction for DTA-to-FTWZ movement while denying its application to the reverse movement. The second proviso to NN-45 excludes goods exported by a 100% EOU or a Free Trade Zone unit from the relevant exemption.

18.7 Further, it is contended that NN-50 requires equipment imported against an EC to be exported upon completion of the specified contract. If instead the equipment is sent to FTWZ pending an unidentified future contract and a fresh EC is later obtained for a new contract, the subsequent transaction is entirely fresh and payment of IGST on the original import does not preserve the exemption.

18.8 It has been argued that the scheme of NN-50 contemplates that equipment no longer required for the original contract and not re-exported must suffer the applicable duty. The Appellant cannot use FTWZ mechanism to defer or avoid such duty and create a tax-neutral revolving arrangement not contemplated by NN-50 or NN-45.

18.9. Accordingly, where goods are warehoused in FTWZ and subsequently cleared into DTA under a fresh contract, such clearance cannot be treated as a normal re-import. The transaction is, in substance, a fresh/conditional procurement, and the benefit of NN-45 is unavailable to the Appellant.

D. ANALYSIS AND REASONING:

19. Heard learned counsels representing the parties and with their able assistance perused the material placed on record and judgment relied thereby.

20. Before proceeding, we first note that the question which falls for determination of this Court is, "*whether the proposed movement of good from DTA to FTWZ and back to DTA against a fresh EC for a new contract, qualifies for exemption from BCD, IGST and compensation cess under NN-45?*"

21. This Court proposes to examine the aforesaid issue under the following heads, namely: ***(i)*** the interplay between NN-45 and NN-50; ***(ii)*** the scope/scheme of Condition No.48 of NN-50; ***(iii)*** the legal character of the movement of goods to and from FTWZ; ***(iv)*** whether such movement can, in law, constitute a "re-import" in the context of NN-45; ***(v)*** the incompatibility between the simultaneous claims under NN-50 and NN-45; ***(vi)*** the "closed transaction" nature of the original EC; and ***(vii)*** the effect of reliance placed on Sections 30 and 53 of the Act of 2005, Rule 48(3) of the Rules of 2006, and the Circular of

2019.

Interplay between NN-45 and NN-50

22. The proposed *modus operandi* by the Appellant, includes bringing the equipment to DTA upon availing the concessional rate of duty prescribed under NN-50. However, it is pertinent to note that the said concession, is not a benefit attached absolutely or indefinitely to such equipment having been imported to DTA under the notification.

23. Instead, it is a conditional fiscal concession, extended in respect of specified goods intended for specified petroleum operations and upon fulfilment of the conditions prescribed thereunder. In accordance with S. No.404 of NN-50, the case of a sub-contractor, as the Appellant admittedly is, proceeds upon the issuance of a certificate, EC in the present case, by the concerned licensee, lessee or Contractor, certifying that the goods are required for the specified petroleum operations.

24. Consequently, the nature of the aforesaid concession assumes significance. In this regard, it becomes pertinent to note that the import of equipment into India, stands certified by the concerned Contractor, making such concession intrinsically connected with the purpose for which the equipment is imported and the contractual deployment evidenced by way of the EC. To put it differently, the equipment brought to India availing the concession under NN-50, does not confer upon the Appellant an unrestricted right to retain the equipment in India and successively deploy the same for unrelated domestic contracts while preserving, through a series of subsequent transactions, all the fiscal consequences of the original concessional

import.

25. In this regard, it also becomes pertinent to highlight that in the application for advance ruling filed by the Appellant before the CAAR, it has made the following factual assertion:

> *"1.3. **The certificate is issued by the Customer basis a stipulated condition in the contract to export the imported equipment post completion of contract. Accordingly, the Applicant upon completion of the said contract, would have to export the said equipment.** However, where the Applicant foresee the same equipment will be required for other contracts in India, the Applicant will export the equipment to a Logistics service provider (hereinafter referred to as 'LSP') location in a SEZ/FTWZ. It is pertinent to note that the Applicant will not avail any kind of duty incentives or benefits when this equipment is being sent from DTA to SEZ/FTWZ.'*
>
> ***(Emphasis Supplied)***

26. The Appellant, by way of the aforestated assertion, has on its own characterised the transaction, as one requiring export of the equipment upon completion of the contract. Having approached the CAAR on the specific factual premise that the EC was issued pursuant to a contractual condition requiring export of the equipment upon completion of the contract, the Appellant cannot, in the absence of any explanation or reconciliation, now contend before this Court that no such requirement exists either under the EC or under NN-50. The subsequent shift in position, without any attempt to explain or reconcile the inconsistency, cannot be countenanced.

27. The aforesaid position is further borne out by the observations made by CAAR, which proceeded on the basis that the Appellant was required to export the imported equipment upon completion of the project for which it had been imported. The aforestated position finds further corroboration in the stand taken by the Respondents in their

Counter Affidavit filed before this Court, wherein it was specifically averred that the equipment was required to be exported upon completion of the said project.

28. Significantly, the Appellant, in its rejoinder, has failed to rebut or controvert the aforestated position. In these circumstances, this Court finds it safe and reasonable to proceed on the premise that export of the equipment upon completion of the specific project constituted a condition attached to the initial import.

29. Hence, it is in this context, that the intent and purpose underlying NN-45 assumes relevance and is required to be comprehended in order to determine its applicability. A perusal of S. Nos.1 to 4 of the NN-45 makes it evident that the benefit thereunder is extended only to specific goods that were actually exported out of the country. Admittedly, the Appellant's case does not fall within the aforestated contingencies, leading them to raise a claim under S. No.5, which is a residuary clause of NN-45. Accordingly, the intent and purpose of the said notification, stands on an entirely distinct footing, inasmuch as it is not premised in the context of a deemed export followed by a re-import, which is merely a fiction sought to be created by moving the equipment to FTWZ/SEZ.

30. In view of the aforestated, mere movement of equipment from DTA to FTWZ cannot, in substance, be equated with the export contemplate upon completion of project. The proposed arrangement by the Appellant, being directed towards retention and subsequent deployment of the equipment in India, cannot be permitted to convert the export condition attached to the original concessional import into a

mere procedural formality. Such an interpretation would sever the concession under NN-50 from the purpose and conditions governing its availment. Therefore, the benefit under S. No.5 of NN-45 must, be determined in accordance with its express terms and scheme and cannot be sustained merely on the basis of a deemed export occasioned by movement to SEZ/FTWZ.

Scope/scheme of Condition No.48 of NN-50

31. The aforesaid conclusion stands further reinforced by the architecture of Condition No.48 of NN-50 itself. The notification does not leave the post-import life of concessionally imported equipment unregulated. On the contrary, it expressly contemplates the circumstances in which such equipment may continue to be used, may cease to be required for the original deployment, may be transferred for another eligible petroleum operation, or may ultimately be disposed of.

32. Condition No.48(b), in the case of a sub-contractor, requires the requisite certificate from an authorised senior official of the concerned Contractor certifying that the goods are intended for the specified purpose. It further secures undertakings from the concerned parties, including the sub-contractor, fastening liability for duty, fine or penalty in the event of non-compliance with the conditions of NN-50. Therefore, the concessional import is accompanied, from its inception, by a regime of continuing accountability.

33. Significantly, Condition No.48(c) expressly provides for transfer of the goods from a specified person (transferor) to another specified person (transferee). Where the importer or other specified

person transfers the equipment, the transferor is required to intimate the jurisdictional customs authority and obtain discharge in respect of the goods so transferred; the transferee, in turn, assumes the obligations imposed by NN-50 as though it were itself the importer. Where such transferee is a sub-contractor, the notification further requires the corresponding undertaking from its licensee, lessee or Contractor.

34. The aforestated provision assumes significance to the extent that the provision, itself recognises that equipment once imported for one eligible petroleum operation may thereafter be required for another eligible operation and, accordingly, provides a specific mechanism by which such domestic redeployment may take place. Thus, the legislature, or the delegated authority exercising the power of exemption, has consciously provided the manner in which the continuity of the concession may be preserved notwithstanding a change in the person or contractual deployment to which the equipment is thereafter devoted.

35. Condition No.48(d) completes this scheme by prescribing the consequence where the goods are sought to be disposed of after use, including in an unserviceable condition or as scrap. It provides for disposal through MSTC or such other Government-notified agency and specifies the duty consequence applicable thereto. Therefore, the scope and scheme are comprehensive in character, since it addresses continued certified use, transfer to another eligible person for corresponding use, and eventual disposal.

36. It is against this carefully structured scheme that the Appellant's

proposed FTWZ arrangement needs to be considered. It is the case of the Appellant that the commercial objective behind proposed movement of goods back to DTA, after parking at FTWZ, is to retain the same equipment for a subsequent Indian petroleum contract. However, for such eventual redeployment, NN-50 itself provides a specific mechanism under Condition No.48(c). The equipment need not, for that purpose, be converted into the subject matter of an export-and re-import cycle. The notification already supplies the juridical bridge between one eligible deployment and another.

37. In this regard, the principle of *expressum facit tacitum cessare*, becomes squarely applicable to the present scenario, since the notification expressly provides the manner in which a particular contingency is to be dealt with, a further and materially different route cannot ordinarily be introduced by implication, particularly where that alternative route produces an additional fiscal advantage. Therefore, this Court would be slow to read into NN-50 a further, unexpressed pathway under which equipment may be placed in FTWZ, retained their pending identification of another domestic contract, and subsequently brought back into DTA under a fresh EC while simultaneously claiming a separate re-import exemption under NN-45.

38. In substance, the proposed route of the Appellant would place FTWZ mechanism in a position of fiscal advantage over the express transfer mechanism under Condition No.48(c). If the equipment is genuinely required for another eligible petroleum operation, that provision already permits its transfer subject to the prescribed safeguards. The interposition of FTWZ cannot, merely by creating an additional procedural step, generate a further exemption under NN-45.

39. Such a construction would produce an anomalous consequence. An importer who follows the express statutory mechanism for transfer under Condition No.48(c) would remain within the fiscal discipline of NN-50, whereas an importer who interposes FTWZ could, on the Appellant's interpretation, obtain the additional benefit of a re-import exemption. The notification cannot reasonably be construed as rewarding the adoption of an additional procedural step by conferring a benefit which is otherwise unavailable. Fiscal concessions are matters of legislative prescription, not of commercial ingenuity, and the choice of a more circuitous route cannot, *per se*, enlarge the exemption otherwise available.

40. The said reasoning assumes greater force because the Appellant has not identified any statutory impediment to availing the transfer mechanism under Condition No.48(c), nor any circumstance demonstrating that the equipment could not remain subject to the regulatory regime of NN-50 pending its subsequent eligible deployment. Where the substantive object can be achieved through a mechanism expressly contemplated by the notification, the Court cannot, by interpretive implication, recognise an alternative route merely because it yields a more favourable fiscal consequence to the Appellant.

<u>The legal character of movement of goods to and from FTWZ</u>

41. Having considered the aforesaid, the question which now arises is whether the proposed movement of the equipment from DTA into FTWZ can, in the circumstances of the present case, be treated as the export contemplated by the scheme so as to generate, upon its

subsequent return, a fresh entitlement under Serial No. 5 of NN-45. In the considered view of this Court, the proposed movement fails to produce the aforesaid desired consequence.

42. Undisputedly, the Act of 2005, employs statutory fictions for specified purposes and FTWZ is treated, for those purposes, as being outside the customs territory. Similarly, Section 30 of the Act of 2005, provides for the treatment of goods cleared from SEZ to DTA as goods chargeable to customs duty as if imported into India. These provisions determine the legal consequences of movements involving SEZ within the field for which the statutory fiction was enacted. However, they do not, operate as a universal declaration that every movement into FTWZ is an export in all fiscal contexts and that every subsequent clearance from FTWZ is necessarily a re-import for purposes of every exemption notification.

43. A legal fiction must be confined to the purpose for which it is created and cannot be extended beyond its legitimate field. Consequently, the fiction under SEZ legislation cannot be employed to override independent conditions governing a concession under NN-50 or to manufacture an exemption under NN-45.

44. The commercial and physical circumstances of the present case further reinforce this conclusion. The equipment is not being dispatched to a foreign territory for usage abroad, rather it remains within India, continues to be available to the Appellant, and is placed in FTWZ precisely because the Appellant proposes to use the same equipment subsequently in another Indian petroleum operation. Therefore, its movement into FTWZ serves as an intervening

warehousing arrangement between two domestic contractual deployments.

45. Notably, the statutory fiction cannot be permitted to obscure the substantive reality. In the present case, the equipment does not cease, in any meaningful commercial sense, to be available for domestic use; nor is its subsequent movement into DTA occasioned by the failure, abandonment or reversal of an overseas transaction. The eventual clearance from FTWZ is instead triggered by a new domestic contract and a fresh EC. Consequently, FTWZ movement functions as a bridge between two separate domestic transactions rather than as the outward leg of a genuine commercial continuum whose return leg constitutes a re-import.

46. Moreover, the consequence of accepting the Appellant's construction would be to permit the same equipment to pass through an indefinite succession of such cycles. After completion of the first contract, equipment could be moved into FTWZ; upon procurement of a second contract, it could be brought back against a fresh EC and a claim under both NN-50 and NN-45. Further, upon completion of the second contract, the same process could be repeated against a third EC, and so on. The statutory fiction would thereby become the vehicle for maintaining the same concessionally imported equipment in a perpetual tax-neutral cycle between successive domestic contracts. Such an outcome cannot be attributed to SEZ fiction without, in substance, adding to the exemption notifications a benefit which their text does not contain.

Movement of goods is not a "re-import" in the context of NN-45

47. While the Act of 1962 and 2005 defines expressions such as "import" and "importer", it does not furnish an exhaustive statutory definition of "re-import". Therefore, the expression must be understood in its ordinary legal and commercial sense, informed by the statutory context in which it is employed and, in the present case, by the nature and purpose of the exemption contained under NN-45.

48. The absence of an express definition does not, however, render the expression infinitely elastic. The prefix "re" ordinarily conveys a return to a place or status previously occupied. Whereas, in the context of goods, re-import necessarily carries the essential idea of goods having gone out and thereafter being brought back. The expression cannot, merely because the goods are physically identical to goods which had earlier been in India, encompass every subsequent entry of those goods into DTA.

49. An identity of goods is undoubtedly a factual element ordinarily present in a re-import; however, it is not, by itself sufficient to constitute one. There must also be the requisite continuity between earlier export and the subsequent return. The return must bear the character of a restoration or reversal of the outward movement, rather than constituting the commencement of an independent transaction having an entirely different commercial and legal basis, particularly, when the requirement and subsequent usage of such imported goods is intrinsically tied to its necessity in a commercial transaction.

50. In the present case, the aforestated continuity is absent. The Appellant proposes to place equipment in FTWZ after completion of

the original contractual deployment, a step that would also be in violation of NN-50. However, its eventual clearance into DTA will not be occasioned by the reversal of transaction which caused it to leave DTA. Instead, it occurs only after a new contract is secured and a fresh EC is issued. Accordingly, the intervening movement separates one completed contractual deployment from another and does not reverse the first.

51. The aforesaid conclusion stands reinforced by the undisputed condition requiring re-export of the equipment upon completion of its utilisation in the relevant project, since such re-export marks the exhaustion of the original import purpose. Accordingly, any subsequent contract and the corresponding fresh EC constitute a distinct transaction, and the resultant clearance into DTA cannot be regarded as a re-import for the purposes of NN-45.

<u>Incompatibility between the simultaneous claims under NN-50 and NN-45</u>

52. The foregoing assumes particular significance in the context of the Appellant's simultaneous reliance upon NN-50 and NN-45 in respect of the very same movement of the equipment from FTWZ into DTA. In this regard, it may be noted that the two notifications proceed upon fundamentally different juridical premises, while NN-50 applies where the goods are "imported" for specified petroleum operations, NN-45, specifically applies to "re-imported" goods. As such the two expressions cannot be treated as interchangeable merely because the same physical goods are involved.

53. The twin exemption being sought by the Appellant, is not

merely a question of nomenclature. Since the two concepts occupy different legal fields, the Appellant cannot, treat the same inward movement as an import for the purpose of one notification and as a re-import for the purpose of another, merely by allocating the respective exemptions to different components of the levy. The character of the transaction must precede and govern the fiscal consequence; it cannot be moulded separately to suit each exemption claimed.

54. The practical consequence of the contrary approach would be to permit the same movement to carry two inconsistent legal identities and thereby unlock two separate fiscal concessions. Such an interpretation would not merely recognise an exemption already granted by law; it would enlarge the combined operation of NN-50 and NN-45 beyond their respective fields. This Court cannot, in construing fiscal exemptions, supply by implication a benefit which the notifications have not expressly conferred.

<u>The "closed transaction" nature of the original EC</u>

55. The contention of learned counsel representing the Respondents that the original and subsequent movement of goods constitute distinct and self-contained concessional import transaction, merits acceptance. The original EC formed the basis of the initial import of equipment for specified petroleum operations of the original Contractor. Upon completion of that certified deployment, the equipment would be disposed of in terms of stipulations contained in NN-50.

56. Accordingly, the subsequent movement of goods stand on an entirely different footing, inasmuch as it arises only upon the issuance of a subsequent EC for a different and fresh contractual engagement.

As such, the subsequent transaction must be examined independently and tested against the conditions applicable to it. Since the mere identity of physical equipment cannot, by itself, collapse two otherwise distinct transactions into a single continuing transaction.

57. A re-import exemption presupposes a sufficient continuity between the export and the return. The present arrangement contains no such continuity. The first transaction is brought to an end by completion of the original contractual deployment and the export to FTWZ; while the second transaction begins only when a new domestic requirement arises. The two transactions are connected only by the identity of the equipment; they are not, in law, so connected as to make the subsequent movement a return leg of the earlier transaction.

58. As already stated in the preceding paragraphs of this judgment, on the basis of the material as it stands, this Court has proceeded on the premise that there was a condition in the EC requiring export of equipment after its utilisation in one project and upon completion of the said contract.

59. Since the equipment is required to be exported, the purpose of equipment for that particular project stands completed. Accordingly, as and when a new EC subsequent to another project comes to be issued, the said goods cannot be brought into DTA claiming exemption under NN-45, qualifying the movement as a re-import; rather, it shall constitute an import.

60. No condition to the contrary having been shown to apply, and no argument against such condition having been made by the

Appellant, this fact has not been disputed before us. Hence, since the EC exclusively required export, and the Appellant fulfilled such condition by transferring the equipment to FTWZ/SEZ, it amounts to closure of one transaction, and any future contract shall trigger an altogether new transaction.

Reliance placed on Sections 30 and 53 of the Act of 2005, Rule 48(3) of the Rules of 2006 and Circular of 2019

61. Learned Senior Counsel for the Appellant relied upon the aforesaid provisions and authorities to contend that the proposed movement of goods constitutes a re-import eligible for exemption under NN-45. However, the said submissions, do not advance the Appellant's case and are dealt with *in seriatim* hereinafter.

62. Section 53 of the Act of 2005, being a deeming provision serves the statutory purposes for which SEZ/FTWZ regime has been enacted; it does not, without more, override the specific conditional regime under NN-50. The general statutory fiction and the specific fiscal conditions must be harmoniously construed, but harmonious construction cannot mean that the former is deployed to create a benefit which the latter does not grant.

63. Similarly, Section 30 of the Act of 2005, which treats goods cleared from SEZ to DTA as goods chargeable to customs duty as if imported into India, determines the manner and incidence of assessment. It does not, by itself, answer the separate and anterior question whether the goods are entitled to a particular exemption applicable to "re-imported goods". Since assessment as an import and eligibility for a specific exemption are distinct legal inquiries.

64. Likewise, Rule 48(3) of the Rules of 2006 does not support the case of the Appellant. The Rule operates upon factual and statutory premise of procurement of goods by the Unit from DTA. However, on the facts pleaded by the Appellant, FTWZ Unit does not acquire or procure the equipment in any substantive sense; it merely holds the Appellant's equipment in custody, on its instructions, for eventual redelivery to the Appellant. Therefore, the factual foundation for treating the transaction as procurement by the Unit is itself absent.

65. In any event, Rule 48(3), being a general procedural provision governing SEZ Units, cannot displace the specific and conditional scheme governing the original concessional import under NN-50. A general provision cannot, by indirection, introduce into NN-50 a fifth mode of dealing with concessionally imported equipment when the notification itself expressly addresses continued use, transfer and disposal.

66. In so far as reliance upon Circular of 2019 is concerned, the same also does not assist the Appellant. The circular concerned goods actually sent out of India for specified temporary purposes, such as exhibition or consignment, and subsequently returned in circumstances addressed by the circular. Its factual and legal foundation is materially different. The present case concerns equipment retained within India and moved into FTWZ under the special statutory fiction applicable to SEZ transactions, with its subsequent return occasioned by a fresh domestic contract and a fresh EC.

E. CONCLUSION:

67. For all the foregoing reasons, this Court has reached the conclusion that the proposed movement of equipment from FTWZ into DTA pursuant to the subsequent EC constitutes a fresh import and not a re-import under S. No.5 of Notification No.45 Cus. Further, the original transaction, founded upon original EC and the corresponding contractual deployment, stood concluded upon completion thereof, and any subsequent EC, as and when issued, will give rise to a distinct transaction, notwithstanding the identity of the equipment.

68. Moreover, the Appellant cannot attribute two inconsistent legal characters to the same movement, import under NN-50 and re-import under NN-45, merely to secure separate fiscal exemptions. Additionally, FTWZ fiction cannot be extended to create such an additional benefit, particularly when NN-50 itself provides the mechanism for subsequent eligible deployment.

69. Keeping in view the above position of law, as well as the facts and circumstances of the present case, the present Appeals are dismissed.

70. Accordingly, the pending application(s) stands disposed of.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

AUGUST 19, 2026
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