

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Customs Appeal No.40979 of 2015

(Arising out of Order-in-Original No.35419/2015 dated 27.02.2015 passed by Commissioner of Customs, Chennai-VI, Custom House, No.60, Rajaji Salai, Chennai 600 001)

M/s.Tamilnadu Cricket Association

.... Appellant

M.A. Chidambaram Stadium,
Victoria Hostel Road,
Chepauk,
Chennai 600 005.

VERSUS

The Commissioner of Customs (Chennai-VI)

... Respondent

Custom House,
No.60, Rajaji Salai,
Chennai 600 001.

APPEARANCE :

Ms. S. Sridevi, Advocate, for the Appellant
Ms. O.M. Reena, Authorized Representative for the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI.C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No.41086/2024

DATE OF HEARING : 13.08.2024
DATE OF DECISION :19.08.2024

Per: Ms. Sulekha Beevi. C.S

Brief facts are that the appellant M/s.Tamilnadu Cricket Association (TNCA for short), affiliated to the Board of Control for Cricket in India (BCCI) having its office at M.A. Chidambaram Stadium, Chennai imported Ground Light Equipments, Flood Light Luminaries Lamps and accessories (for installation of Flood Lighting Systems in the Stadium) etc. under 5 Bills of Entry covering the total value of Rs.2,85,19,880/- and cleared them at Nil rate of Customs duty as per Adhoc Exemption Order No.338/95 dt. 21.12.1995 issued by Govt. of India, Ministry of Finance, Department of Revenue, vide F.No.463/93/95. Cus.-V.

2. The said goods were allowed for clearance at Nil rate of Customs duty as well as Additional duty subject to the conditions available in Adhoc Exemption Order as below and also on execution of undertaking to the effect that the importers would abide to the conditions of the Adhoc Exemption Order :

(i) Shall be used only for the purpose for which it is imported;

(ii) Shall not be used for any commercial purpose whatsoever;

(iii) Shall not be sold, disposed of, gifted, loaned, exchanged or parted away without prior permissions of the Department of Revenue, Ministry of Finance, New Delhi;

(iv) Shall be open for inspection by the Customs Officer.

3. It came to the knowledge of the Department on the basis of documents received from TNCA that, they had conducted one day matches under flood lighting system in the Chidambaram Stadium, Chennai. The documents proved that more than three one day matches were played using the flood lighting system which has been imported in CKD condition and assembled and erected in the Chidambaram stadium. From the above, it appeared that the materials / equipments imported under the cover of Adhoc

Exemption Order No.338/95 dt. 21.12.1995 and cleared at Nil rate of duty filing the undertaking that the same will not be used for commercial purposes has been used by the appellant for commercial purposes in respect of three one day matches, which is violation of the condition (ii) of the adhoc exemption order.

4. Show Cause Notice dt. 16.12.2002 was issued to the appellant raising the above allegation and proposing to demand duty of Rs.2,28,15,874/- under Section 28 (1) of the Customs Act, 1962 along with interest and for imposing penalty under Section 112 (a) of the Act *ibid*. The notice also proposed confiscation of the goods imported under 5 Bills of Entry.

5. After due process of law, the original authority held that the appellant has violated condition No. (ii) of the Adhoc Exemption Order and ordered for confiscation of the goods giving an option to redeem the same on payment of redemption fine of Rs.28 lakhs. The duty demand proposed in the SCN was confirmed and penalty of Rs.22 lakhs was imposed under Section 112 (a) of Customs Act, 1962. Aggrieved by such order, the appellant is now before the Tribunal.

6. The *Ld. Counsel* Ms. S. Sridevi appeared and argued for the appellant. It is submitted that the appellant is an affiliation of the Board of Control for Cricket in India (BCCI) and are promoting the game of Cricket in Tamil Nadu. BCCI is the Government body conducting cricket matches domestically in India and also organizing International Cricket matches in India. BCCI conducts matches all over India by way of rotation as per allocation. When matches are allotted to the appellant, such matches are usually conducted by appellant at M.A. Chidambaram Stadium, Chepauk, Chennai.

6.1 The TNCA during the month of October 1995 had written to the Ministry of Youth Affairs and Sports, and Revenue Secretary, Government of India, New Delhi seeking exemption from import duty for import of 4 nos. of High Hot Dip Galvanized Steel Mast with

Polygonal cross-section and tilted head frame with flood lights, luminaries with accessories, for the purpose of erecting the same in M.A. Chidambaram Stadium in order to meet out international standards for conducting matches, including World Cup match (quarter-finals) to be held during March 1996. The purpose of import was to uplift the stadium to International Standards so that our cricketers would be able to adapt themselves to the ever-increasing day/night one day cricket match that has become common for any cricket competition these days.

6.2 The request of the TNCA was considered favourably and an exemption vide Adhoc Exemption Order No.338/95 dt. 21.12.1995 was issued by the Government of India, Ministry of Finance subject to certain conditions.

6.3 Subsequently, in the month of December 2022, i.e. after a lapse of 7 years from the date of first import, the department issued the present SCN alleging that the appellant has violated condition No. (ii) of the Adhoc Exemption Order. As per the said condition, the goods imported shall not be used for commercial purpose whatsoever. It is alleged in the SCN that the appellants have to pay the customs duty foregone at the time of import as they have violated this condition.

6.4 The Ld. Counsel argued that the purpose of import of the flood light equipments for the M.A. Chidambaram Stadium was to make it a world-class stadium and to meet the technical requirements of television broadcasting. The exemption is granted for import of flood lights for the stadium which is used for conducting matches. The exemption was not given for conducting only World Cup tournaments. The Department has erroneously interpreted the condition that the goods have been imported only for the use in World Cup tournaments and cannot be used for any other matches.

6.5 It is argued by the counsel that once the flood lights are installed, embedded to earth it cannot be easily removed and

refixed. The facility of flood light can be used for all matches conducted in the stadium and these lights have become a functional part of the stadium. There is nothing in the order that the use of flood light has to be restricted only for the world cup.

6.6 The department has denied the exemption stating that the floodlight facility has been used for other matches which would tantamount to 'use for commercial purpose'. The stand taken by the department is contrary to the conditions imposed in the Adhoc Exemption Order. If such interpretation is adopted, then the whole purpose for which the goods were imported and installed in the stadium would be defeated. The TNCA neither engages in any commercial activity nor the objective or the memorandum of TNCA promotes any commercial activity. It only promotes sports, particularly cricket and activities connected thereto.

6.7 The Ld. Counsel put forward arguments on the ground of limitation also. It is argued that the SCN has been issued under Section 25 (2) and the duty demand has been raised under proviso to Section 28 (1). However, the SCN does not allege that the appellant has suppressed facts with intention to evade payment of customs duty. There is no evidence adduced by the department as to suppression of facts for invoking the extended period. The SCN issued after a lapse of 7 years is barred by time. Ld. Counsel prayed that the appeal may be allowed.

7. The Ld. A.R Ms. O.M. Reena appeared and argued for the Department. The findings in the impugned order was reiterated. It is submitted that the appellant had imported the flood light luminaries and connected materials at the time of conduct of the world cup match. The adhoc exemption order was issued with certain conditions. The second condition of the order states that the goods shall not be used for commercial purpose. In the present case, the appellant has used the flood light during the conduct of 3 one day matches in 1996, 1997 as well as 1998. The conduct of

one day matches is commercial in nature. The appellant having violated the adhoc exemption order, the demand of duty is proper. The discussions in paras 16, 17 & 18 of the impugned order were referred to by the Ld. A.R to submit that, as the imported flood lights were used for conduct of one day international matches there is clear violation of condition of the adhoc exemption order.

7.1 In regard to the arguments put forward on the ground of limitation, the Ld. A.R submitted that the SCN has invoked the proviso to Section 28 (1) of Customs Act, 1962. As the violation is of continuing nature, the demand raised invoking the extended period is in order. It is prayed that the appeal may be dismissed.

8. Heard both sides.

9. The issue that arises for consideration is whether confiscation of the goods, imposition of redemption fine and penalty as well as the demand of customs duty alleging that the appellant has violated condition (ii) of the Adhoc Exemption Order No.338/95 dt. 21.12.1995 is legal and proper. The second issue is whether the demand is hit by limitation.

10. The conditions of the adhoc exemption order have already been reproduced in para-2 above. The said condition states that the flood lighting goods shall not be used for commercial purposes. The exemption order does not explain the meaning of 'commercial purpose' used in the condition. The facts narrated above shows that the appellant had requested to the Government for exemption from Customs duty for import of impugned goods during preparation for the World Cup, 1996. Letter of October, 1995 issued by TNCA to Secretary (Revenue), Govt. of India, New Delhi reads as under :

“.....TNCA has in right earnest started preparation for staging the World Cup cricket matches proposed to be played at the M.A Chidambaram Stadium and while the ground maintenance and other infrastructure facilities are of routine nature, the floodlighting of the stadium is a project by itself which would involve a big capital expenditure. While TNCA is making arrangements to meet the above

expenditure, we would like to bring to your kind attention that while floodlighting to International Standards, it is necessary for TNCA to import 4 Nos. 61.7 Metres high hot dip galvanised Steel Mast with Polygonal cross section and tilted head frame which are essential to ensure a glare free playing condition. As the Masts are an essential to hold the floodlighting, we would be grateful if this could be classified as a sporting accessory thereby enabling us to import at zero customs duty and other associated duties.

We understand that a similar exemption for import of luminaires was granted to Cricket Association of Bengal when the Eden Garden Cricket Stadium was provided with illumination by flood lights. This would enable TNCA to effectively lower the cost of the project and in turn help TNCA to install the floodlighting in the stadium from its limited funds. May we therefore request your good office to recommend our availing zero customs duty for import of complete luminaires with accessories as described in Annexure I required for floodlighting the M.A Chidambaram Stadium. Your support to this would go a long way in enabling TNCA make available a truly first class floodlight cricket stadium to the cricket fraternity as well as make available an international cricket stadium for day / night matches for the World Cup 1996.”

11. The department has construed condition (ii) to mean that the appellant can use the flood lights only for the conduct of world cup matches. The adhoc exemption order does not say that the flood lights can be used only for world cup matches. Though the request was made during the preparation for the world cup matches, the intention was to uplift the infrastructure standards of the stadium. When the Government has granted exemption from Customs duty, the department has sought to deny the exemption by alleging that the flood lights have been used for cricket matches other than the world cup. It is thus assumed by the department that the conduct of world cup international matches is for non-commercial purpose and that the conduct of one day international matches is for commercial purpose. We do not understand what is the criteria to hold that the world cup international match is for non-commercial purpose and that the conduct of one day international matches is for a commercial purpose. The adhoc exemption order does not make any

such distinction. The entire SCN has been issued on assumptions and presumptions. We do not find any factual or legal basis to hold that there is a violation of condition (ii) as alleged by the department. The issue on merits is answered in favour of the appellant and against the Revenue.

12. The Ld. Counsel has argued on the ground of limitation also. The SCN has been issued under Section 25 (1) and also demanding duty under proviso to Section 28 (1) of the Customs Act, 1962. On perusal of the SCN, we do not find any whisper alleging that there is suppression of facts with intention to evade customs duty on the part of the appellant. So also, there is no evidence adduced by the department to show that the appellant has suppressed facts. In fact, the department has issued the SCN after collecting the documents from the appellant that they have conducted 3 one day international matches during the years 1996, 1997 and 1998. The SCN has been issued after a lapse of more than 7 years. In our view, the ingredients of proviso to Section 28 (1) are not present in the case on hand. The demand raised is therefore time-barred. The issue on limitation is also answered in favour of appellant and against the Revenue.

13. In the result, the impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on 19.08.2024)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(SULEKHA BEEVI. C.S)
Member (Judicial)