

**Export Oriented Unit — National calamity contingent duty, SHE Cess and Education Cess on imported crude petroleum oil**

The Gujarat High Court Bench comprising Hon'ble Mr. Acting Chief Justice Bhaskar Bhattacharya and Hon'ble Mr. Justice J.B. Pardiwala on 23-2-2012 **admitted** the Tax Appeal Nos. 1551-1555 of 2011 filed by Commissioner of Customs (Preventive), Jamnagar against the CESTAT Final Order Nos. A/536-545/2011-WZB/AHD, dated 17-3-2011 as reported in **2011 (268) E.L.T. 380 (Tri. - Ahmd.) (Commissioner v. Reliance Industries Ltd.)**. While admitting the appeals, the High Court passed the following oral order :

"These Appeals are *admitted* on the following substantial questions of law :

- (A) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that as a consequence of finalisation of the In-bond Bills of Entry in respect of warehouse goods, the Customs authority at the port of import has no jurisdiction to finally assess, confirm demand and to order collection/recovery/adjustment of Nationality Calamity Contingent Duty Cess, and Interest in respect of imported Crude Petroleum Oil by the Respondent-EOU.
- (B) Whether in the facts and circumstances of the case, the Tribunal has committed substantial error of law in holding that the respondent being 100% EOU is not required to discharge any duty liability in respect of the imported goods *warehoused in their premises* and used for the purpose of manufacturing In-Bond.
- (C) Whether the Customs authority at port of import has jurisdiction to assess and collect the National Calamity Contingency Duty levied under Section 134 of the Finance Act, 2003, which is not exempted under Notification No. 52/2003-Cus., dated 31-3-2003, nor covered under B-17 Bond/procurement certificate for the import of Crude Petroleum Oil by the 100% Export Oriented Unit or the jurisdictional Central Excise Authority having administrative jurisdiction over 100% EOU after the receipt of the goods in 100% EOU.
- (D) Whether the goods imported by 100% EOU under the exemption Notification can be cleared without assessment and payment of National Calamity Contingent Duty, Cess which is not exempted under Notification No. 52/2003-Cus., dated 31-3-2003 and also not covered under any type of bond from the port of import and in the event of such clearance is permitted, then whether Central Excise Authorities are required to collect the National Calamity Contingent Duty, Cess before use of the goods for manufacture of final products in the EOU.
- (E) Whether the respondent - 100% EOU is obliged to discharge duty liability to pay National Calamity Contingent Duty, Cess which is not exempted under Notification No. 52/2003-Cus., dated 31-3-2003 for the import of Crude Petroleum Oil.
- (F) Whether the National Contingent Duty, Cess which is not exempted under Notification No. 52/2003-Cus., dated 31-3-2003 which is assessed and collected by the Customs authority at the stage of port of import i.e. Sikka is correct or whether the opinion of the Tribunal is correct that there is no stage in the EOU to collect National Calamity Contingent Duty, Cess duties even though such duties are not exempted under Notification No. 52/2003-Cus., and whether the conditions of the exemption Notification for import by 100% EOU will prevail over the provisions of warehousing for demand of National Calamity Contingent Duty, Cess in the present case.
- (G) Whether in the scheme of the Customs Act, 1962, there is any difference between the provisions relating to bonded warehouse applicable to the normal customs bonded warehouse where the entire customs duties are deferred till the clearance of the goods from the warehouse, and 100% EOU wherein the goods are being imported and cleared under exemption notification from the port of import when there is no provision for exemption of duty [National Calamity Contingent Duty, Cess].
- (H) Whether the Tribunal was correct in holding that since the department has no case that the impugned goods were removed from the warehouse or were not used in the production of final products and since the imported goods were not cleared from the warehouse, there cannot be any collection of duty, though the National Calamity Contingent Duty, Cess is not at all exempted under the said notification and respondents have not executed B-17 bond for National Calamity Contingent Duty, Cess, the question of levy of duty of National Calamity Contingent Duty, Cess at the time of clearance from warehouse does not arise.
- (I) Whether the issue relating to jurisdiction for assessment and collection of National Calamity Contingent Duty, Cess overrides the provisions of Section 134 of the Finance Act, 2003 for levy and collection of National Calamity Contingent Duty, Cess."

The Appellate Tribunal in its impugned order had held that 100% EOU is not required to discharge any duty liability in respect of imported goods warehoused in their premises and used for purpose of manufacturing in-bond. The fact of payment of duty at the time of filing Bill of Entry for warehouse 'under protest' will not change the legal position that 100% EOU is required to pay duty only at the time of clearances of warehoused goods for home consumption. The assessee was not required to pay any NCCD, Education Cess and SHE Cess.

*[Commissioner v. Reliance Industries Ltd. - 2013 (298) E.L.T. A109 (Guj.)]*