

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Customs Appeal No.10221 of 2021

(Arising out of OIA-AHM-CUSTM-000-APP-773-20-21 dated 12/02/2020 passed by Commissioner of CUSTOMS-AHMEDABAD)

INDUCTOTHERM INDIA PVT LTD.....Appellant

Plot No Sm-6 Road No 11 Sanad Ii Industrial Estate Bol Village Sanand
Ahmedabad, Gujarat

VERSUS

C.C.-AHMEDABAD

.....Respondent

Custom House,
Near All India Radio Navrangpura,
Ahmedabad, Gujarat

APPEARANCE:

Shri Amal Dave, Advocate for the Appellant
Shri. Dharmendra Kanjani, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10734 /2022

DATE OF HEARING: 21.06.2022
DATE OF DECISION :21.06.2022

RAMESH NAIR

The brief facts of the case are that the appellant are engaged in the manufacture of sophisticated machinery like Induction Melting and Heating Furnace, Induction Welding Equipment and also parts of such machinery. For manufacturing of such goods the appellant requires huge amount of capital goods and materials, some materials like Automatic winding machine, automatic tester, reflow oven, centurion, precision solder paste printer, pick & place machines, etc are required by the appellant and equipment and machinery namely (i) Reflow Oven, (ii) Precision Solder Paste Printer, (iii) Pick and Place Machines, (iv) Conveyor Belt System, (v) Automatic Test and Inspection Equipment and (vi) Automatic Test and Inspection Equipment which were ordinarily imported by the appellant from foreign countries. In the present case, such equipment and machinery were imported by the appellant under six bills of entry being Bill of Entry Nos. (i) 7257602 dated 28.7.2018, (ii) 7558373 dated 08.08.2018, (iii) 7785388 dated 25.08.2018

(iv) 7738453 dated 22.08.2018, (v) 7738458 dated 22.08.2018 & (vi) 8573711 dated 23.10.2018.

1.1 The Central government has issued a Notification No.25/2002-Cus dated 1.3.2002 which has been amended from time to time. Under this Notification No.25/2002-Cus as amended by Notification No.8/2004-Cus dated 08.01.2004, the goods described in Column (2) of table in the notification are allowed full exemption from customs duty leviable thereon as specified in the First Schedule of the Customs Tariff Act. The goods imported by the appellant which constitute the subject matter of the present appeal are specified at Srl. No.11, 29 & 57 of the table of the notification and such goods are fully exempted for use in the manufacture of finished goods in the nature of "PCB assemblies". The appellant has been using the equipment and machinery involved in the present case for manufacture of PCB assemblies in the factory which are sold in the market whereas, substantial quantities of PCB assemblies are used further within the factory for manufacture of the appellant's final products namely induction melting and heating furnace as well as induction welding equipment. Since the goods like reflow oven, centurion, precision solder paste printer, pick and place machines, etc. imported by the appellant were to be used for the manufacture of PCB assemblies in the appellant's factory. The appellant claimed this exemption for such imported goods.

1.2 The adjudicating authority vide letter dated 06.01.2020 issued a demand note for recovery of government dues. The said letter for recovery was issued in pursuance to the Order-In-Original earlier passed vide OIO No.2/JC/(instu)/Paldi/Information/2019 dated 08.04.2019. The appellant being aggrieved by the said letter filed an appeal before the learned Commissioner (Appeals) who has upheld the recovery letter dated 06.01.2020 therefore, the present appeal filed by the appellant. The case of the department is that the exemption notification under the Sl. No. 11,29 & 57 of the table of the notification is applicable to only IT Industries whereas, the appellant's factory is manufacturer of induction melting and heating furnace as well as induction welding equipment, on this ground exemption was denied.

02. Shri Amal Dave, learned counsel appearing on behalf of the appellant at the outset submits that the same issue in the appellant's own case has been considered by this tribunal in its final order No. A/12469/2021 dated 25.10.2021 and held that the appellant are eligible for exemption

Notification No.25/2002-Cus. He submits that since the demand in the present case is in pursuance of the earlier order which has already been set aside by this tribunal hence, the appeal be allowed.

03. Shri Dharmendra Kanjani, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that the only ground on which the department has been denying the exemption Notification No. 25/2002-Cus dated 01.03.2002 is that the subject imported goods are exempted only if it is imported and used by the IT Industries whereas, in the appellant's case the industry is not IT Industry but it is induction melting and heating furnace as well as induction welding equipment manufacturing unit. We find that there is no dispute that the subject imported material are clearly specified in the table given in the notification, the notification does not prescribe a condition that the imported goods are eligible for exemption only for IT Industries therefore, so long the goods are specified in the notification against the given Sr.Nos. as mentioned above the exemption cannot be denied. This issue has been considered by this tribunal wherein, the following order was passed:-

"The issue involved is that whether the appellant's import of goods namely Automatic/Semi-automatic winding Machines, Automatic Testers are eligible for exemption Notification No. 25/2002-Cus. Dated 1.3.2002 as amended when it is used in the manufacture of "Plastic Film Capacitors". The case of the department is that even though the items are covered under the notification but as per the heading of the exemption notification i.e. "Exemption to capital goods imported to use by IT/Electronic industry" since the appellants factory is not a IT/Electronic industry therefore as per the heading of the notification, they are not eligible for exemption.

2. *Shri. Amal Dave Learned Counsel appearing on behalf of the appellant submits that the exemption was denied on the basis of heading in the notification as well as on the budget speech. He submits that in the notification there is no such conditions that the exemption is available to only IT/Electronic Industry. He submits that so long the imported goods and finished goods is covered under the table the exemption is available to the assessee. He submits that the budget speech or the heading which is given by the publisher of the Excise Law Times (Centax Publication) is not a part of the notification. Therefore, on that basis only exemption cannot be denied. He placed reliance on the following judgments:*

- *Amin Merchant V/s. Chairman, Central Board of Excise & Revenue 2013 (338) ELT 164 (S.C.)*
- *Fomento Resources Pvt. Ltdl V/s. Union of India 2019 (367) ELT 897 (Bom.)*
- *Jasoda Biri Products V/s. Commr. Of C.Ex., Kolkata-II 2018 (361) ELT 902 (Tri. -Kolkata)*
- *Dove Airlines Pvt. Ltd. V/s. CC (Prev), New Delhi 2014 (313) ELT 292 (Tri.-Del)*
- *Inter Care Ltd. V/s. Collector of Customs, New Delhi 1997 (89) ELT (Tribunal)*
- *Tata Iron & Steel Co. Ltd. V/s. CCE 1995 (75) ELT 3 (SC)*

3. *Shri. Dharmendra Kanjani, Learned Superintendent Authorized Representative appearing on behalf of the revenue reiterates the finding the impugned order.*

4. *We have carefully considered the submission made by both the sides and perused the records. We find that the exemption was denied merely on the basis that heading of the notification given by the publisher is of "Exemption to the goods of IT/Electronic industry" and also on the basis of budget speech. We find that the heading is not a part of the notification however, the goods imported by the appellant is squarely covered under the table given in the notification and also the finished goods wherein the same is also clearly given in the table accordingly, the appellant is entitled for exemption.*

4.1 *As regard the budget speech, the budget speech is also not a part of the notification, notification has to be read without putting anything either from the budget speech or any heading given by the publisher therefore, so long the goods are undisputedly covered under the table it is eligible for exemption notification 25/2000-Cus.*

5. *Accordingly the appellant is entitle only for exemption notification. The impugned order is set aside. Appeal is allowed."*

For reference, First para of the impugned order is reproduced below:-

"M/s. Inductotherm (I) Pvt. Ltd., Plot No.SM-6 Road No.11, Sanand-II Industrial Estate, Bol- village, Sanand- 382170 (hereinafter referred to as „the appellant“) have preferred an Appeal No.710/2019-20 against Letter F.No.VIII/48-96/CUS/Paldi/Induc/T/17-18 dated 06/01/2020 for recovery of Government dues subsequent to OIO No. 2/JC/(instu)/Paldi/Information/2019 dated 08.04.2019 and OIA No.AHD-CUSTOM-000-APP-470-19-20 dated 09.12.2019 (hereinafter referred to as „the impugned letter“) issued by the Deputy Commissioner of Customs) Customs Division, Paldi, (hereinafter referred to as „the original authority“)"

From the above, it can be seen that this proceeding is consequent to the earlier proceeding carried out by Order-In-Original dated 08.04.2019 and OIA dated 09.12.2019. The above cited judgment of this tribunal was passed against the OIA dated 09.12.2019 therefore, this case being only for the

subsequent period on the same issue, following the aforesaid previous order, the impugned order will not sustain.

05. Accordingly, the impugned order is set aside. Appeal is allowed.

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)