CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. III

Customs Appeal No. 40586 of 2023

(Arising out of Order-in-Original No. 102378/2023 dated 14.06.2023 passed by Commissioner of Customs, No. 60, Custom House, Rajaji Salai, Chennai – 600 001)

M/s. Bharat Heavy Electricals Ltd. **...Appellant**
(IEC No. 0588138690)
House Siri Fort, Assian Games Village,
South Delhi,
Delhi – 100 049.

Versus

Commissioner of Customs **...Respondent**
Chennai II Commissionerate,
No. 60, Custom House,
Rajaji Salai,
Chennai – 600 001.

APPEARANCE:

For the Appellant : Mr. M. Karthikeyan, Advocate
For the Respondent : Mr. Sanjay Kakkar, Authorised Representative

CORAM:
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER No. 40484 / 2026

DATE OF HEARING : 05.01.2026
DATE OF DECISION : 10.04.2026

Per Mr. VASA SESHAGIRI RAO

This is an appeal filed by M/s. Bharat Heavy Electricals Limited, Delhi (hereinafter referred to as "Appellant") to assail the Order-in-Original No. 102378/2023 dated 14.06.2023 passed by Commissioner of Customs, Chennai-II (hereinafter referred to as "LAA").

2. Briefly stated, the facts of the case are that the Appellant imported various goods vide Bill of Entry No. 2295456 dated 10.01.2021 and 29 other bills of entry. Appellant classified the imported goods under Customs Tariff Headings 69039090, 72109090, 73043931, 73045110, 73045930, 73079390, 73269099, 84129090, 84139190, 84149090, 84821090, 84823000, 84832000 and availed benefit of Notification No. 50/2017-Customs dated 30.06.2017 (Sl.No.413 and 414); and thereby paid Basic Customs Duty (BCD) @ 5%, SWS @ 10% and IGST@ 18% at the time of clearance of the goods.

3. During the Post Clearance Audit of the above imports, Department entertained the view that Appellant is not eligible for the benefit of notification No. 50/2017-Customs dated 30.06.2017 as they failed to fulfill condition No. 9 of the notification, which they were required to fulfil for claiming benefit under Sl.No. 413 and 414 of the said notification. Accordingly, after following due process of issuing Consultative letter dated 02.03.2022, the reply to which was not found satisfactory, followed by a pre-notice consultative letter dated 31.10.2022 and personal hearing dated 16.12.2022, a show cause notice dated 02.01.2023 was issued to the Appellant by the LAA with the proposals to: -

i. deny the duty benefit availed under Serial No. 413 and 414 of Notification No. 50/2017-Cus dated 30.06.2017 read with Notification No. 01/2021 dated 01.02.2021 for the goods imported vide Bill of Entry No. 2295456 dated 01.02.2021 and 29 other bills of entry for not complying with the procedures laid down in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

ii. demand the total short levied duty amounting to Rs. 4,56,76,673/- (Rupees Four Crore Fifty Six Lakh Seventy Six Thousand Six Hundred and Seventy Three only) under Section 28(1) of the Customs Act, 1962 along with appropriate interest under Section 28AA *ibid*.

iii. hold the impugned goods valued at Rs. 93,75,80,739/- (Rupees Ninety Three Crore Seventy Five Lakh Eighty Thousand Seven Hundred and Thirty Nine Only) liable for confiscation under Section 111(m) and 111(o) of the Customs Act, 1962 and

iv. impose penalty under Section 112 (a) of the Customs Act, 1962 for rendering the goods liable to confiscation.

4. After following due process of adjudication, the impugned Order dated 14.06.2023 was passed wherein the LAA: -

i. rejected the exemption claimed and the assessment for the goods imported by Appellant vide Bill of Entry No. 2295456 dated 01.02.2021 and 29 other bills of entry and ordered for reassessment of the same denying the exemption benefit claimed under Sl. No. 413 and 414 of the Notification No. 50/2017-Customs dated 30.06.2017.

ii. Confirmed the demand of total short levied Duties of Rs. 4,56,76,673/- (Rupees Four Crore Fifty Six Lakh Seventy Six Thousand Six Hundred and Seventy Three only) arising out of the denial of exemption notification benefit in respect of the goods imported vide Bill of Entry No. 2295456 dated 01.02.2021 and 26 other bills of entry as detailed in the Show Cause Notice, under Section 28(8) of the Customs Act, 1962 along with applicable interest thereon under the provisions of Section 28AA of the Customs Act, 1962.

iii. Ordered confiscation of the impugned goods of Assessable Value Rs. 93,75,80,739/- (Rupees Ninety Three Crore Seventy Five Lakh Eighty Thousand Seven Hundred and Thirty Nine Only) covered under Bill of Entry No. 2295456 dated 01.02.2021 and 29 other bills of entry as detailed in the Show Cause Notice and imposed redemption fine of Rs. 9,00,00,000/- (Rupees Nine Crores only) on Appellant in lieu of confiscation

under the provisions of Section 125 of the Customs Act, 1962.

iv. imposed penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs only) on Appellant under the provisions of Section 112(a) of the Customs Act, 1962.

5. The appellant has preferred the present appeal assailing the impugned order.

6.1 The Ld. Advocate Mr. M. Karthikeyan appeared and argued for the Appellant and submitted that for all the impugned Bills of Entry (and even earlier), they initially filed them claiming exemption under Sl.No. 413 or 414 of Notification No. 50/2017-Cus. After assessment by the proper officer, they requested the Deputy Commissioner of Customs to recall and reassess the Bills of Entry to include EU bond details in the bond column, and accordingly all the Bills of Entry were recalled and updated to support the exemption claim.

6.2 He further submitted that the Appellant have executed the required end-use bonds/undertakings to comply with the condition that the imported goods would be used for the specified purpose. They further submitted Chartered Engineer’s Certificates dated 07.04.2022,

13.12.2022 and 15.12.2022 in respect of the Hyderabad, Tiruchirapalli and Ranipet units respectively to confirm such usage, consistent with the earlier procedure prior to the amendment of notification No. 50/2017-Cus dated 30.06.2017 under which bonds were discharged upon submission of such certificates.

6.3 He contended that the Appellant complied with the end-use condition and submitted Chartered Engineer's Certificates as proof, and this fact has not been disputed by the respondent in the Show Cause Notice or impugned order. Upon the audit pointing out a procedural lapse, the appellant promptly informed the jurisdictional Customs Officers at Hyderabad and Trichy, who subsequently issued end-use certificates for the imports made under Bill of Entry No. 3049828 dated 08.03.2021 and another 14 bills of entry vide letters dated 18.10.2022 and 07.07.2023 respectively. Therefore, it can be said that there has been substantial compliance with the requirements of notification No. 50/2017-Cus. dated 30.06.2017 by the Appellant.

6.4 The Ld. Advocate submitted that the doctrine of substantial compliance provides that when the essential requirements and intent of a statute or exemption notification are fulfilled, minor procedural lapses should not

deprive the benefit of exemption to the Appellant. Therefore, since the intended end use condition has been met by the Appellant, the procedural non-compliance should not deny them the exemption. In this regard, he placed reliance on the following decisions: -

i. *Salora Components Pvt Ltd – 2018 (11) TMI 1533 – CESTAT AHMEDABAD (affirmed by Hon'ble Supreme Court in 2019 (7) TMI 467 – SC Order)*
ii. *(ii) Samsung India Electronics Pvt Ltd – 2025 (1) TMI 854 – CESTAT ALLAHABAD*

6.5 He averred that the Show Cause Notice and impugned order deny the concessional rate solely due to non-submission of a certificate under Rule 5 of the IGCR Rules, 2017. He argued that the said Rule 5 only requires furnishing certain information and is purely procedural in nature, not affecting eligibility for the exemption under the notification. In this regard, he relied on the following case laws to contend that procedural lapses should not prevent the availment of substantive benefits: -

i. *M/s RKM Powergen Pvt. Ltd – 2025 (9) TMI 1286 – CESTAT CHENNAI*
ii. *Samsung Electronics Ltd. – 2017 (10) TMI 150 – CESTAT CHENNAI (affirmed by Hon'ble Madras High Court in 2021 (3) TMI 1079 – MADRAS HIGH COURT*

6.6 The Ld. Advocate argued that whereas it is seen from paras 42 and 47 of the impugned order that the Respondent has resorted to a strict reading of the exemption notification, placing the burden on the importer to prove eligibility, courts have applied a purposive interpretation to

extend such benefits despite procedural lapses, as seen from the following decisions on the applicability of concessional rates specified in Notification No. 50/2017-Cus dated 30.06.2017: -

i. *Cepheld India Private Limited – 2025 (6) TMI 1899 – CESTAT NEW DELHI*
ii. *Hemogenomics Private Limited – 2025 (10) TMI 820 – CESTAT NEW DELHI*

6.7 He submitted that the IGCR Rules, 2017 were amended by Notification No. 02/2021 dated 01.02.2021, changing the filing requirements for exemption claims. The IGCR Rules, 2017 were then amended by way of substitution vide notification No. 07/2022 Cus. (NT) dated 01.02.2022. Prior to the amendment dated 01.02.2021, details about claim of exemption were required to be filed only with the Customs at the port of import, and after the amendment dated 01.02.2022, the same procedure continued. However, during the intervening period between 01.02.2021 and 01.02.2022, the appellant was required to submit the details both with the Customs at the port of import and with the jurisdictional Customs Officer.

6.8 The Ld. Advocate placed reliance on the decisions in *Imperial Warehousing Industries Limited [2025 (9) TMI 141 – CESTAT MUMBAI], Black Gold Rubber [2023 (4) TMI 969 – CESTAT CHANDIGARH]* and *The Bell Match Company [2021 (8) TMI 133 – MADRAS HIGH COURT]* to

submit that it is a settled law that any amendments made by way of substitution would apply retrospectively.

6.9 He argued that amendments made by way of substitution have retrospective effect, contrary to the Respondent's contention in para 36 of the impugned order. Consequently, the amendment made vide notification No. 07/2022-Cus. (NT) dated 01.02.2022 applies retrospectively and nullifies the earlier requirement under Notification No. 02/2021 dated 01.02.202110 of 2025 to submit import details to the jurisdictional Customs officer.

6.10 He averred that the exemptions claimed relate to manufacture and specified end use, which were defined for the first time under the IGCR Rules, 2022. These rules outlined procedures for providing end-use information, maintaining records, and supplying goods to end-use recipients, whereas the earlier IGCR Rules, 2017 contained no provisions for specified end use. Therefore, the procedural requirements under the IGCR Rules, 2017 do not apply to imports made for specified end use purposes. He argued that since the IGCR Rules, 2017 did not govern such imports, the Show Cause Notice and impugned order denying the exemption for non-compliance with Rule 5(1) of the said rules is legally unsustainable.

6.11 The appeallant was called for hearing on 05.01.2016 when Mr. M. Karthikeyan, Advocate representing the appellant, urged the Bench to allow the appeal submitting that there was no dispute as to the extension of the benefit of the exemption notification to the goods imported under the 26 BsoE since fulfilling the requirements against Sl. Nos. 413 & 414 of the notification was core to the issue and the said requirements were duly complied with. The learned Advocate also said that the post-importation condition No. 9 relating to compliance with Rule 5 of CIGCRD was to ensure that the imported goods were used for specified purposes and in this case, there was no dispute and neither was there any allegation or finding that either the imported goods were not used for the specified purposes or that the appellant could not evidence the use of the same for specified purposes. He also said that the units located at Hyderabad, Ranipet and Tiruchirapalli were the units wherein the imported goods were used and for all the units letters from Chartered Engineers certifying the intended use had been submitted to the Respondent Adjudicating Authority even at the time of hearing pre-consultative notice and further end-use certificate issued by the jurisdictional customs officer at Hyderabad was submitted to the LAA while replying to the SCN. The learned Advocate also placed before

the Bench the end-use certificate issued by the jurisdictional customs officer at Tiruchirapalli. On a specific query from the Bench as to why the certificate could not be produced before the LAA, Mr. Karthikeyan said the jurisdictional customs officers did not act on their representations in view of the proceedings initiated at the place of import. The same was taken on record. After a couple of days, Mr. Karthikeyan, the Ld. Advocate, mentioned before the Bench that the end-use certificate pertaining to their unit at Ranipet has also been received from the jurisdictional Customs officer. We permitted him to file the same with the Registry.

7. The Ld. Authorized representative Mr. Sanjay Kakkar stoutly defended the impugned Order and said that the appellant forfeited the right to benefit in view of non-compliance with the specified procedure.

8. Having heard the parties at length, we find that the only issue arising for determination in this case is as to whether the benefit of exemption under Notification No. 50/2017-Cus as amended by Notification No. 09/2021-Cus dated 01.02.2021 can be denied to the Appellant for not following the procedure set out in Rule 5 of CIGCRD. We now proceed to record our observations.

i. We find that Notification No. 50/2017 – Customs (Sl. Nos. 413 & 414) dated 30.06.2017 before its amendment by Notification No. 02/2021 – Customs dated 01.02.2021 permitted import of goods falling under Chapter 84 or any other Chapter intended for renovation or modernization of a power generation plant (other than captive power plant) / or by a manufacturer-supplier for manufacture and supply of machinery and equipment to a power generation plant (other than a captive power plant) at the concessional rate of duty of 5% subject to fulfilling the conditions under 53 (for Sl. No. 413) & 54 (for Sl. No. 414). Condition Nos. 53 & 54 each, in turn, contained 2 conditions, the primary condition being the Chief Engineer of the concerned SEB or SPU certifies that the scheme of renovation or modernization has been approved and an Officer not below the rank of a Secretary in the State Government recommends in each case the grant of exemption to the goods / the Chief Engineer of the concerned SEB or SPU certifies the quantity, description and technical specifications of raw materials and parts required to be imported for manufacture and supply of machinery and equipment and an officer not below the rank of Secretary in the State Government recommends in each case the grant

of exemption to the goods. The other condition in both the cases is that the importer gives an undertaking to the customs officer at the port of importation that the imported goods would be used for the intended purposes and if not differential duty would be paid. It is the second condition which was removed in the amending notification and replaced with Condition No. 9 requiring compliance with the procedure set out in CIGCRD.

ii. In this case, there is no dispute that the import of goods at concessional rate of duty has been duly authorized by the concerned officers in the manner specified in Condition Nos. 53 & 54. Thus, such an authorization for import of the goods for specified purposes in the manner stated is central to availing of benefit of concessional rate of duty under Notification No. 50/2017-Customs dated 30.06.2017 as amended. The condition stipulated earlier is executing a bond at the port of importation with an undertaking to pay differential duty and condition 9 specified in the amending notification requires to follow the procedure set out in CIGCRD which are intended to prevent misuse and for ensuring the use of the imported goods subjected to concessional rate of duty only for the intended or specified purposes.

9. We are, therefore, of the firm view that non-compliance with CIGCRD, a procedural requirement, cannot come in the way of the appellant enjoying the benefit of the said notification so long as they are able to establish that the imported goods covered by the 27 BsOE were used only for the specified purposes. Under these circumstances, we find force in the argument of the appellant that when there is no dispute as to the compliance with a substantive requirement, the benefit of concessional rate of duty cannot be denied for procedural non-compliance when they have submitted proof to show that the imported items were used only for the specified purposes. As observed by us earlier, the only issue arising for decision in this appeal is as to whether the appellant should be denied the benefit for procedural lapse despite complying with a substantive requirement. We fail to understand as to how the issue involved in this appeal has anything to do with interpretation or involves enlarging the scope of exemption, as observed by the LAA in Paras 41 & 42 of the impugned Order.

10. The LAA has relied upon the case laws in support of his findings. In the case of Novopan India Limited, the disputed issue was whether Particle Boards manufactured by them were Unveneered Particle Boards within the meaning of Item No. 6 in the Table to the exemption notification. In the

case of Liberty Oil Mills, the issue was whether the benefit of exemption can be extended to the products manufactured by the appellant by treating them as Vegetable Products manufactured out of Indigenous Rice bran oil covered by Item No. 13 to the exemption notification. In the case of Rajasthan Spg. & Wvg. Mills, the issue was whether blended yarn in which polypropylene fibre predominates was or was not entitled to the benefit of a Central Excise exemption notification. In the case of Dilip Kumar & Company, the exemption was denied on the ground that the imported goods contained chemical ingredients for animal feed and they were not animal / or prawn feed as such. In all those cases, the basic question was whether the goods were entitled to the benefit of exemption or not whereas in this case indisputably the imported goods qualified for exemption in view of fulfilment of Conditions 53 or 54, as the case may be. Thus, the case laws relied upon do not even remotely apply to the facts in this appeal and we are constrained to observe that the reliance on these unconnected case laws is not in accordance with the law and terms and conditions of the Notification. The only reason for not extending the Notification is only due to non-compliance to procedure outlined in CIGCRD.

11. As is evident on record, it is not that the appellant has not followed any procedure since, unaware of the changes in the notification, the appellant continued to follow the same old procedure which, *inter alia*, included furnishing of information of goods to be imported and execution of an end use bond before the customs officer at the port of import instead of before the customs officers at places where the imported goods were meant to be used as per the amended procedure. The submissions of the appellant, that once the Officer at the port of import agreed for assessment under the said Sl. No(s), they would submit a letter to the DC, Customs requesting him to permit to re-assess the Bills of Entry for including the details of the bond executed in the bond column for EU bond (sample copies filed by the Advocate for the Appellant) based on the request, the Bills of Entry were recalled for including the said details; and the proper officers also accepted their claim for the exemption as also the end-use bond / undertaking and allowed them the exemption, remain unrebutted. It is thus clear that despite change in procedure from 01.02.2021 requiring the appellant to execute bonds before the customs officers at places of use of the imported goods, the customs officers at the port of import continued to accept the same as per the old procedure unaware of the changes brought about. If it is the case of the department that the appellant

was guilty of violation in not having followed the amended procedure, the officers at the place of import were equally guilty in accepting and allowing a procedure no more in vogue. They also woke up only after the incorrect adoption of procedure was noticed in Post Clearance Audit. As rightly submitted by the appellant, had the proper officers informed them of the changes, they would have adhered to the amended procedure. Further, we find that there are no material changes in the amended procedure as per which the compliance procedure got shifted to places where the user-units were located rather than the port of import. As per Rule 5(2) of CIGCRD, the importer has to execute a continuity bond before the DC or AC of Customs having jurisdiction over the premises where the imported goods would be put to use, to undertake to pay the differential duty. As rightly argued by the appellant, this is purely intended to safeguard the interest of Revenue and this was in vogue earlier also but the execution of bond / undertaking was before the DC or AC at the port of import. Thus, the change in procedure, even otherwise, has not affected the right of the appellant to claim the benefit of the said notification. The decision of CESTAT in the case *of M/s Salora Components Private Limited* reported in *2018 (11) TMI 1533 – CESTAT Ahmedabad*, affirmed by the Hon'ble Supreme Court, *vide 2019 (7) TMI 467*, rendered under similar

circumstances and cited by the appellant also supports our view.

12. It is not in dispute that the certificates issued by the Chartered Engineers certifying use of the imported goods for the intended / specified purposes form the basis for issue of End Use Certificates by the DC / AC of customs at the users' end. We find that the Advocate representing the appellant, even while attending a hearing held by the LAA on 16.12.2022 for Pre-Consultative Notice, filed Chartered Engineers' Certificates certifying the use of the imported goods for all the 3 units. The LAA could have either asked the appellant to produce end-use certificates giving a time-line or could have himself caused verification at the other ends to satisfy himself as to the use of the imported goods for the intended purposes since the sole objective was to ensure that the goods imported at concessional rate of duty were used for the intended or specified purposes. By doing so, LAA could have avoided this unnecessary litigation. LAA should know that the reason behind issuing pre-consultative notice is not to make the noticee agree and pay the demand but to find out whether any worthwhile purpose would be served by initiating proceedings proposed under SCN. This is more so as the appellant in this case is a reputed PSU and the imported goods were meant for power generation. We

could not ascertain any reasons on the part of LAA to not even consider the End-use Certificate issued by the proper officer at Hyderabad when it was produced before him during adjudication. Thus, as observed by us in the preceding portions of this Order, the LAA was bent upon saddling the appellant with duty liability.

13. Further, viewed from another angle, the dispute in this case primarily relates to interpretation of the amendments made in Notification No. 50/2017-Customs dated 30.06.2017 *vide* Notification Nos. 02/2021-Customs (NT) dated 01.02.2021 and 07/2022-Customs (NT) dated 01.02.2022. While the department's case is entirely dependent on notification Nos. 02/2021-Customs (NT) dated 01.02.2021 which amended notification No. 50/2017-Customs dated 30.06.2017 by way of introducing a new condition to be fulfilled by the Appellant, *viz*. complying with the procedure prescribed under Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 (IGCR Rules, 2017, in short), the Appellant has placed reliance on the subsequent amendment Notification No. 07/2022-Customs (NT) dated 01.02.2022 which restored the conditions of notification No. 50/2017-Customs dated 30.06.2017 to the position as existing prior to the amendment brought in vide notification No. 02/2021-Customs (NT) dated 01.02.2021

and argued that the amendment made *vide* Notification No. 07/2022-Customs (NT) dated 01.02.2022 should be applied retrospectively to nullify the effect of Notification No. 02/2021-Customs (NT) dated 01.02.2021. This apart, Appellant has also pressed into service Doctrine of Substantial compliance and argued that substantial benefit cannot be denied for procedural lapse. Another argument of Appellant is that courts have applied a purposive interpretation to extend the benefits of exemption notifications despite procedural lapses. Appellant has cited various judicial pronouncements in support of all the above arguments.

14. In the submissions before LAA, the Appellant cited the judgment of the Hon'ble Supreme Court in the case of *Income Tax Officer Vs. Vikram Sujitkumar Bhatia [Civil Appeal No. 911 of 2022]* to submit that it is a settled law that any amendment made by way of substitution would apply retrospectively. Similar judgments in the cases of *Forsoc Chemicals India Pvt Ltd [2015 (318) ELT 240 (Kar)], Mehler Engineered Products India Pvt Ltd [2018 (364) ELT 27 (Mad)]* and *Doosan Infarcore India P Ltd [2020 (374) ELT 374 (Mad)]* were also relied upon by the Appellant. Further, the Appellant relied on the decisions in *Sambhaji vs Gnagabai [2009 (240) ELT 161 (SC)], Salora Components*

Pvt Ltd [2019 (370) ELT 925 Tri Ahm.] and *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* that non-filing of declaration in terms of Rule 5(1) of IGCR Rules, 2017 is only a procedural lapse on their part as they were not aware of the amendment made to make Condition No. 9 of notification No. 50/2017-Cus dated 30.06.2017 applicable to the exemption claimed by them. They also brought to the notice of the LAA that the decisions of the Hon'ble Supreme Court in the cases of Sambhaji vs Gangabai and Mangalore Chemicals & Fertilizers Ltd [*supra*] have been followed in the case of Forging Machinery Manufacturing Company wherein while dealing with the issue of whether the declaration required to be filed for claiming SSI exemption is a substantive condition or not, on reference to Third Member, the majority decision held that mere non filing of declaration is only procedural. In support of their contention before the LAA that beneficial exemption should be liberally interpreted, Appellant relied on the decision of the Hon'ble Apex Court in the case of Government of *Kerala & Anr. v. Mother Superior* Ador*ation Convent [2021 (3) TMI 93 Supreme Court]* wherein the Hon'ble Apex Court followed its earlier decisions in the cases of *Commissioner of Customs v. M.Ambalal & Co. [2010 (12) TMI 16 SC], CCE Vs Favourite Industries [2012 (4) TMI 65 SC], Commissioner of Customs Vs M/s. Dilip Kumar And Company [2018 (7) TMI 1826 (SC)].* In the

proceedings before the LAA, further reliance was also placed by the Appellant on the judgment of the Hon'ble High Court of Guahati wherein the Hon'ble Court allowed an appeal against the decision of the Tribunal in the case of *Vernerpur Tea Estate [2016 (136) ELT 549 (Tri Kol)* which upheld the rejection of claim of refund of duty where there was a delay of more than 6 years in claiming refund, and while doing so the Hon'ble High Court held as follows: -

> *"The appellant having been once found to be eligible for exemptions and refund of duty paid, denial of benefit of exemptions and refund on the ground of delay, in our considered opinion, will cause grave injustice which cannot be permitted. Even otherwise, it is well settled law that non-following of procedural requirement cannot deny the substantive benefit, otherwise available to the assessee. Also exemptions made with a beneficient object like growth of Industry In a Region have to be liberally construed and a narrow construction of the Notification which defeats the object cannot be accepted. For these reasons, we conclude that the impugned order of the Tribunal is not based on correct appreciation of the provisions of Notification and denial of refund (of duty paid) to the appellant on the ground of delay is wholly unjustified."*

15. In the present appeal, the Ld. Advocate for Appellant has specifically drawn attention to the findings of LAA in para 36 of the impugned order and argued that contrary to LAA's contention in para 36 (of the impugned order), amendments made by way of substitution have retrospective effect. Further, he argued that in paras 42 and 47 (of the impugned order), LAA has resorted to a strict reading of the exemption notification which is contrary to the decisions of Courts on the applicability of concessional rates

specified in Notification No. 50/2017-Cus dated 30.06.2017 wherein a purposive interpretation has been applied to extend the benefit of exemption notification despite procedural lapses.

16. Paras 36 and 37 of the impugned order read as under: -

> *"**36**. All the case laws relied by the noticee in this regard pertains to retrospective applicability of an amending notification. As these are specific to a particular amendment and are need to be applied based on facts and circumstances of the case, they are not relevant to this case. For the argument sake, even if this argument is accepted then the amendment made vide Notification 02/2021 Cus dated 01.02.2021 is also to be considered as retrospective and then we have to state that, they are not following the prescribed condition, even before 01.02.2021. This type of interpretation leads to absurd results, as the provisions of amendment will become otiose. For example, if we buy their argument that amendment vide Notification No. 07/2022-Cus (NT) dated 01.03.2022 is retrospective, then the amendment made vide Notification No. 02/2021 dated 01.02.2021 becomes redundant/otiose. Such an interpretation is not permissible as settled by judiciary by various judgments.*
>
> ***37**. It is a well settled principle of interpretation of statute is that, the interpretation should not make a part of the statute as redundant. In the case of Anant HanumantUlahalkar And Anr vs State of Maharashtra and Ors dated 9 December, 2016 it was held that any interpretation which renders the provisions of a Statute redundant, otiose or surplusage has to be avoided. In case of Rao Shiv Bahadur Singh vs The State of UP AIR 1953, SC 394, Apex Court held that "it is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application". Further in the case of Shri Balaganesan Metals Vs. Shri M.N. Shanmugham Chetty & Ors AIR [1987] SC 1968, the Supreme Court held that "It is a well settled rule of interpretation of statutes that the provisions of the Act should be interpreted in such a manner as not to render any of its provisions otiose". Same view has been approved in various judgements like Sultana Begum vs Prem Chand Jain AIR 1997 SC 1006, The Institute Of Chartered Accountants of India vs M/s.*

> *Price Waterhouse AIR 1998 SC 74, P. Murugesan Vs the Registrar in the Hon'ble Madras High Court judgement dated 09.01.2017. The basic principle is that the legislature does not use the words in vain."*

It is seen from the above para 36 of the impugned order that on the issue of retrospective applicability of amending notifications, instead of studying the case laws cited by the Appellant in light of the facts and circumstances of the case on hand, LAA has brushed aside the same stating that they are not relevant to this case as they are specific to a particular amendment and need to be applied based on facts and circumstances of the case. There is no reasoning given in the impugned order to distinguish the case laws cited by the Appellant based on the facts and circumstances of Appellant's case. Instead, in para 37 of impugned order, LAA has cited certain other case laws related to interpretation of statues, again without examining in detail in the context of retrospective applicability of amending notifications. Thus, the impugned order is in effect a non-speaking order which has made the job of this Tribunal more difficult. While donning the robe of original adjudicating authority, it was the bounden duty of LAA to consider all aspects of the case instead of jumping to conclusions. His failure to do so has burdened this Tribunal to step into the shoes of original adjudicating authority and decide the present appeal.

17. In taking a view in para 36 of impugned order that accepting the Appellant's contention regarding retrospective applicability of Notification No. 07/2022-Cus (NT) dated 01.03.2022 to the Notification No. 02/2021 dated 01.02.2021 would mean that the Appellant were not following the prescribed conditions even before 01.02.2021, LAA has failed to see that if both notification Nos. 02/2021 dated 01.02.2021 and 07/2022-Cus (NT) dated 01.03.2022 are given retrospective effect, then the latter notification would automatically prevail over the earlier notification.

18. Further, LAA has found that if it is accepted that the amendment *vide* Notification No. 07/2022-Cus (NT) dated 01.03.2022 is retrospective, then the amendment made *vide* Notification No. 02/2021 dated 01.02.2021 would become redundant/otiose, which is not permissible as settled by judiciary by various judgments. However, LAA has not cited any case law where it is held that retrospective amendment of any notification resulting in rendering an earlier notification redundant/otiose is not permissible.

19. For rejecting the contention of Appellant that a beneficial notification cannot be denied to them merely for a procedural lapse, LAA has relied on the case of *Chandra Kishore Jha Vs Mahavir Prasad [AIR 1999 SC 3558]* to hold

that it is a well-settled principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner, which is reiterated in the case of *Dhananjay Reddy vs. State of Karnataka [AIR 2001 (SC) 1512]*. LAA has failed to appreciate that the case laws on the issue of failure to do a thing in a particular manner cannot by any stretch of imagination negate the settled law through various judicial pronouncements that a beneficial notification cannot be denied merely for a procedural lapse. It is well settled that a decision is an authority only for what it actually decided on particular facts and circumstances of the case. Therefore, the onus was on LAA to establish that the facts and circumstances of the Appellant's case are similar to the facts and circumstances in the cases of *Chandra Kishore Jha Vs Mhavir Prasad [AIR 1999 SC 3558]* and *Dhananjay Reddy vs. State of Karnataka [AIR 2001 (SC) 1512].* Far from doing so, LAA has not even attempted to establish the same.

20. While the Appellant relied on a selective portion of para 11 of the judgement of Hon'ble Supreme Court in the case of *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* to contend that procedural lapse on their part should not be used to deny them the benefit of exemption notification, it is seen from para 41 of impugned order that

LAA relied on the following selective portion of para 12 of the same judgement without discussing anything about Appellant's contention: -

> *"The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation."*

Placing reliance on some other portion of the case law cited by the Appellant without discussing about the portion relied upon by the Appellant shows the myopic view of LAA in this case. Under the circumstances, it is appropriate to look into the said case law and find out whether it is relevant for deciding the issue on hand and if so, apply the relevant principle emerging out of it to the facts of the present case.

21. It is observed that LAA has resorted to selective reading of the case law to justify his strict interpretation of the notification. In doing so, he ignored the following portion of para 12 of the judgment in the case of *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* which immediately follows the selective portion of the same para 12 quoted by LAA in the impugned order: -

> *"It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India & Ors. v. M/s. Wood Papers Ltd. & Ors. [1991 JT (1) 151 at 155]:*
>
> > *".....Truly, speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is*

> *whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction…"*
>
> *(Emphasis supplied)"*

Thus, it is seen that LAA has misread the case law to mean that the entire notification has to be read either strictly or liberally and held that the Notification No. 50/2017-Cus (Sl.Nos. 413 and 414) claimed by Appellant should be strictly construed. However, the principle laid down by Hon'ble Supreme Court in M/s. Wood Papers Ltd. & Ors. (*supra*) and reiterated in *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* is that the language of the notification has to be applied strictly at the stage of finding out whether the Appellant is eligible for the exemption notification but thereafter, it should be interpreted liberally. Moreover, in M/s. Wood Papers Ltd. & Ors. (*supra*) which was relied by Hon'ble Supreme Court in *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* relied by LAA in this case, it is held that *"once exception or exemption becomes applicable no rule or principle requires it to be construed strictly."*

22. In the selective portion of para 11 of the judgement of Hon'ble Supreme Court in *Mangalore Chemicals & Fertilizers Ltd. [1991 (55) ELT 437 (SC)]* relied by Appellant, it is stated *inter-alia* as under: -

> *"Shri Narasimhamurthy would say the position in the present case was no different. He says that the notification of 11th August, 1975 was statutory in character and the condition as to 'prior permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says Counsel, be equated with the requirement of production of the declaration form in Kedarnath's case and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve."*

It is seen from the above extracts that the principles emerging out of the judgement of Hon'be Supreme Court in *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* are as under: -

i. Merely because a condition of the notification is statutory does not mean one way or the other and the intended purpose of the notification and the conditions thereof is the deciding factor for determining eligibility to the notification benefit claimed.

ii. Condition of notification may be substantive, mandatory and based on considerations of policy or merely belong to the area of procedure.

iii. It is erroneous to attach equal importance to the non-observance of all conditions of a notification irrespective of the purposes they were intended to serve.

Since the entire dispute in the instant case is based on non-observance of condition No. 9 of Notification No. 50/2017-Customs, the principles emerging out of *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)]* are relevant for deciding this case.

23. Condition No. 9 of Notification No. 50/2017-Customs which is required to be fulfilled by importers claiming benefit of Sl.Nos.413 and 414 of the notification reads as under: -

> *"If the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017"*

The intended purpose of any notification containing the condition that the importer claiming benefit under the notification should follow the procedure set out in Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 can be discerned from Rule (2)(1) of the said Rules which reads as under: -

> *"(1)These rules shall apply to an importer, who intends to avail the benefit of an exemption notification issued under sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and where the benefit of such exemption is dependent upon the use of imported goods covered by that notification for the manufacture of any commodity or provision of output service."*

Conjoint reading of condition No. 9 of Notification No. 50/2017-Customs, which is required to be followed by an importer claiming benefit under Sl.Nos. 413 and 414 of the said notification, with Rule (2)(1) of Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 shows without any ambiguity that the intended purpose of notification No. 50/2017-Customs (Sl.Nos. 413 and 414) is that the goods imported thereunder should be used for the manufacture of any commodity or provision of output service.

24. End use certificates dated 07.07.2023 and 09.02.2026 issued by Deputy Commissioner, Customs Division, Trichy and Deputy Commissioner, Customs Division, Cuddalore respectively have been placed by Appellant before this Tribunal. It is not disputed by Revenue that Appellant has fulfilled the intended purpose of notification No. 50/2017-Customs (Sl.Nos. 413 and 414). Therefore in terms of the principle emerging out of the judgement of Hon'be Supreme Court in *Mangalore Chemicals & Fertilizers Ltd [1991 (55) ELT 437 (SC)],* non-observance of condition No. 9 of notification No. 50/2017-Customs by Appellant in this case is a mere procedural lapse.

25. LAA has quoted selectively from other decisions, *viz*. *Novopan India., Versus Collector of C.EX. and CUSTOMS, Hyderabad [1994 (73) E.L.T. 769 (SC)], Liberty Oil Mills (P) Ltd., Versus Collector of Central Excise, Bombay [1995 E.L.T. 13 (SC)] and Rajathan SPG.* and *WVG. Mills Ltd., Versus Collector of C.EX. Jaipur [1995 (77) E.L.T. 474 (SC)]* to hold that exemption notification has to be construed strictly and not liberally and in case of any doubt or ambiguity, the benefit should go to Revenue and not to assessee. However, no attempt has been made by LAA to explore the applicability of these decisions to the facts and circumstances of Appellant's case which goes against LAA's own stand in para 36 of the impugned order to reject the case laws cited by the Appellant as irrelevant on the basis that they are specific to a particular amendment and need to be applied based on facts and circumstances of the case. LAA's use of one yard stick for Appellant and another for himself cannot be allowed. Therefore, all the above case laws relied upon by the LAA deserve to be rejected.

26. In para 46 of impugned order, LAA has stated that in the case of *The Commissioner of Customs (Import), Mumbai Versus Dilip Kumar & Company [2018 (9361) E.L.T. 577 (SC)],* the Hon'ble Supreme Court of India observed that: -

> *"Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption claim or exemption notification"*

> *"When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue."*

It is observed that in the submissions to LAA vide letter dated May 23, 2023, Appellant has placed reliance on the decision of Hon'ble Supreme Court in the case of *Government of Kerala & Anr. v. Mother Superior Adoration Convent [2021 (3) TMI 93 (Supreme Court)]* where while dealing with interpretation of exemption provision contained in the Kerala Building Tax Act, 1975, following the earlier decisions of the Hon'ble Apex Court in the case of *Commissioner of Customs Vs. M.Ambalal & Co [2010 (12) TMI 16 (SC)], CCE Vs Favourite Industries [2012 (4) TMI 65 (SC)], Commissioner of Customs Vs M/s. Dilip Kumar And Company [2018 (7) TMI 1826 (SC)]* and various other decisions relating to State Taxes, held as follows: -

> *"**16**. However, there is another line of authority which states that even in tax statutes, an exemption provision should be liberally construed in accordance with the object sought to be achieved if such provision is to grant incentive for promoting economic growth or otherwise has some beneficial reason behind it. In such cases, the rationale of the judgments following Wood Papers (supra) does not apply. In fact, the legislative intent is not to burden the subject with tax so that some specific public interest is furthered. Thus, in CST v. Industrial Coal Enterprises (1999) 2 SCC 607, this Court held:*
>
> > *"11. In CIT v. Straw Board Mfg. Co. Ltd. 1989 Supp (2) SCC 523 this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in Bajaj Tempo Ltd. v. CIT (1992) 3 SCC 78 it was*

held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in Bajaj Tempo Ltd. case (1992) 3 SCC 78 is applied, there is no doubt whatever that the exemption granted to the respondent from 9-8-1985 when it fulfilled all the prescribed conditions will not cease to operate just because the capital investment exceeded the limit of ₹ 3 lakhs on account of the respondent becoming the owner of land and building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated. After all, the respondent had only shifted the unit to its own premises which made it much more convenient and easier for the respondent to carry on the production of the goods undisturbed by the vagaries of the lessor and without any necessity to spend a part of its income on rent. It is not the case of the appellant that there were any mala fides on the part of the respondent in obtaining exemption in the first instance as a unit with a capital investment below ₹ 3 lakhs and increasing the capital investment subsequently to an amount exceeding ₹ 3 lakhs with a view to defeat the provisions of any of the relevant statutes. The bona fides of the respondent have never been questioned by the appellant."

***17**. Likewise, in State of Jharkhand v. Tata Cummins Ltd (2006) 4 SCC 57 in dealing with a tax exemption for setting up an industry in a backward area, this Court held as follows:*

"16. Before analysing the above policy read with the notifications, it is important to bear in mind the connotation of the word "tax". A tax is a payment for raising general revenue. It is a burden. It is based on the principle of ability or capacity to pay. It is a manifestation of the taxing power of the State. An exemption from payment of tax under an enactment is an exemption from the tax liability. Therefore, every such exemption notification has to be read strictly. However, when an assessee is promised with a tax exemption for setting up an industry in the backward area as a term of the industrial policy, we have to read the implementing notifications in the context of the industrial policy. In such a case, the exemption notifications have to be read liberally keeping in mind the objects envisaged by the industrial policy and not in a strict sense as in the case of exemptions from tax liability under the taxing statute."

It is observed that the judgment of the Hon'ble Supreme Court in the case of *The Commissioner Of Customs (Import), Mumbai Versus Dilip Kumar & Company [2018 (9361) E.L.T. 577 (SC)]* including the specific portion of the said judgement relied by LAA was specifically dealt with in paras 22 and 23 of the judgement of Hon'ble Supreme Court in the case of Government of Kerala & Anr. v. Mother Superior Adoration Convent [*supra*] and it was held that the judgment in the case of Dilip Kumar & Company [*supra*] did not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose and it is well settled that a decision is only an authority for what it decides and not what may logically follow from it. Proceeding further, in para 24 of its judgement in Government of Kerala & Anr. v. Mother Superior Adoration Convent [*supra*], Hon'ble Supreme Court held that the beneficial purpose of the exemption must be given full effect to and a literal formalistic interpretation of the statute at hand should be eschewed. Further, it is held that one should first ask what is the object sought to be achieved by the provision, and construe the statute in accord with such object, and assuming that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted.

The LAA ignored the judgment of Hon'ble Supreme Court in the case of Mother Superior Adoration Convent [supra] relied by the Appellant in its reply dated May 23, 2023 submitted to LAA, and instead of giving full effect to the beneficial purpose of the exemption notification No. 50/2017-Customs (Sl.Nos. 413 and 414) resorted to a literal formalistic interpretation of the notification without first asking himself what is the object sought to be achieved by the exemption notification and construing the statute in accordance with such object, straightaway denied the benefit of exemption to Appellant.

27. The impugned order suffers from other infirmities such as failure to discuss and give findings on other case laws cited by the Appellant, *viz*. *Income Tax officer Vs Vikram Sujitkumar Bhatia [Civil Appeal No. 911 of 2022], Forsoc Chemicals India Pvt Ltd [2015 (318) ELT 240 (Kar)], Mehler Engineered Products India Pvt Ltd [2018 (364) ELT 27 (Mad)]* and *Doosan Infarcore India P Ltd [2020 (374) ELT 374 (Mad)], Sambhaji vs Gnagabai [2009 (240) ELT 161 (SC)], Salora Components Pvt Ltd [2019 (370) ELT 925 Tri Ahm.]* and the judgment of Hon'ble High Court of Guahati wherein the Hon'ble Court allowed an appeal against the decision of the Tribunal in the case of *Vernerpur Tea Estate [2016 (136) ELT 549 (Tri Kol).*

28. It is found that the purpose intended to be served by notification No. 50/2017-Customs (Sl.Nos. 413 and 414) and condition No. 9 thereof has been served in this case in as much as the impugned goods have been used for manufacture and supply of Boiler components for power project sites and end use certificates and Chartered Engineer certificates to this effect have been submitted by the Appellant. Therefore, beneficial purpose of the exemption notification cannot be thwarted by denying the exemption to Appellant on grounds of a procedural lapse.

29. Appellant has not done any mis-declaration warranting confiscation of impugned goods under Section 111(m) of Customs Act, 1962 and Section 111(o) of Customs Act, 1962 cannot be invoked as the impugned goods are found eligible for exemption notification No. 50/2017-Customs (Sl.Nos. 413 and 414). Therefore, impugned goods are not liable for confiscation and consequently, penalty is not imposable on Appellant under Section 112(a) of Customs Act, 1962.

30. In view of the above discussion and findings, the issue in this appeal is decided in favour of Appellant and

against the Revenue. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in open court on 10.04.2026)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

MK