

CUSTOMS AUTHORITY FOR ADVANCE RULINGS
New Customs House, Ballard Estate, Mumbai – 400 001

The 26th of April, 2021
Ruling No. CAAR/Mum/ARC/4/2021
In
Application No. CAAR/Mum/ARC/4/2021

Name and address of the applicant : M/s Larsen & Toubro Ltd.-construction Heavy Civil Infrastructure Division, TC-III, Tower A, 4th Floor, P.B. No. 979, Mount Poonamallee Road, Manapakkam, Chennai, - 600 089

Commissioner concerned : The Commissioner of Customs, Chennai-II (Import Commissionerate), Customs House, 60, Rajaji Salai, Chennai-600 001

Present for the application : 1. Sh. S. Murugappan (Advocate)
2. Sh. K. Udaya Bhaskar

Present for the Department : Sh. R. S. Naik, Commissioner of Customs, Chennai II (Import Commissionerate)

Ruling

M/s. Larsen and Toubro (the applicant, in short) filed an application for advance ruling before the erstwhile Authority for Advance Ruling, New Delhi (AAR, in short) on 14.10.2019. It appears that no advance ruling has been given on the said application by the AAR, and on the appointment of Customs Advance Ruling Authorities (CAAR, in short) at New Delhi and Mumbai under the provisions of section 28EA of the Customs Act, 1962 (the Act, in short) w.e.f. 04.01.2021, the said application has been transferred to the CAAR, Mumbai in February, 2021 in accordance with the provisions of sub-section 3 of section 28F of the Act. Scrutiny of the application by the Secretary to the CAAR, Mumbai in terms of the regulation 2(c) of the Customs Advance Rulings Regulations, 2021, notified vide notification no. 01/2021-Cus. (N.T.), dated 04.01.2021 revealed that the time limit of 3 months for pronouncing the advance ruling as provided under sub-section 6 of section 28-I of the Act had already expired on 04.01.2021, the day the CAAR, Mumbai came into existence. Therefore, the Secretary to the CAAR, Mumbai pointed out to the applicant that their original application has lapsed and that, if they are still desirous of obtaining an advance ruling, they need to apply afresh. However, as a trade facilitation measure, the application fee prescribed under sub-section 3 of section 28H of the Act was waived as it was paid originally and no advance ruling was pronounced. A communication dated 16.02.2021 from Sri S. Murugappan, Advocate and authorised representative of the applicant was received by the Secretary to the CAAR, Mumbai on 19.02.2021 affirming that the declarations made



in the original application remain valid and unchanged and also requesting to process the application for advance ruling.

2. The personal hearing, in virtual mode, in this case was fixed for 06.04.2021. However, a request for adjournment was received on the ground of the scheduled elections to the Legislative Assembly of the state of Tamil Nadu on the same day. The hearing, was therefore, adjourned to and was held on 15.04.2021. the applicant was represented in the hearing by S/Sri Murugappan and K. Udaya Bhaskar. The government was represented by Sri R. S. Naik, Commissioner of Customs, Chennai port. The learned counsel informed at the outset that they have already completed the imports for the Bangalore Metro Rail Project for which the subject advance rulings were sought and that on their request, in view of their pending application for advance rulings, the concerned import consignments have been assessed provisionally. It was also informed by the learned counsel that they have made similar imports for the Mumbai Coastal Road Project and would also be importing the same goods for future tunnelling projects. The learned counsel was asked why they did not inform about such change of facts when they were requested to re-apply if they continue to be desirous of obtaining an advance ruling instead of affirming that all the declarations made in the original application remain valid and unchanged. Besides, it was also pointed out that the benefit of nil rate of duty under entry no. 446 of the notification no. 50/2017-Cus., dated 30.06.2017 is no longer available and the entry no. 446 has been amended vide notification no. 02/2021-Cus., dated 01.02.2021 and the exemption is now available only to the extent of duty @ 2.5% on parts and components for manufacture of tunnel boring machines provided the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 is followed. In view of the changed circumstances, the applicant was asked as to why their application for advance ruling shouldn't be rejected. Sri Murugappan sought some time to submit additional submissions.

3. An email was received from Sri Murugappan on 21.04.2021. However, a perusal of the mail revealed that it consists of the copy of a communication dated 17.09.2020 to the Additional Commissioner, AAR, New Delhi requesting to expedite personal hearing; a copy of the reply dated 23.09.2020 informing that the application will be listed as and when court proceedings start; a copy of the request of the applicant dated 02.01.2020 addressed to the Deputy Commissioner of Customs(Group - V), Commissionerate - II, Chennai Custom House for provisional assessment; and a copy of a similar request dated 04.01.2020. A written communication has also been received from Sri Murugappan on 23.04.2021. The said submissions can be summarised as follows:- that, the time limit of 3 months as prescribed in section 28-I(6) is merely procedural and therefore, an application for advance ruling doesn't lapse merely because the ruling is not given within the time limit prescribed; that, they had made representation to the Deputy Commissioner to assess the goods provisionally since their application for advance ruling is pending and on the basis of their request, provisional assessment was ordered which would be finalised only after the advance ruling is received; that, in view of the fact that provisional assessment was resorted to because of pendency of advance ruling application, it cannot be said that the issue is pending before the customs authorities independently. The submissions also include comments on the report of the Commissioner.

4. I have accorded due consideration to all the materials before me. This is a request for advance ruling seeking classification of tunnel boring machine and its components, as well as the eligibility of the said goods for exemption from customs duty. The request for advance ruling was filed in the secretariat of the erstwhile AAR, New Delhi on 14.10.2019. No pronouncements were made on the said application within three months as required under the provisions of sub-section 6 to section 28-I



of the Act for the reason for non-constitution of the requisite bench. I find it difficult to agree with the assertion of the applicant that the limitation prescribed under law is a mere procedural requirement. I am mindful of the fact that the limitation of three months for pronouncing an advance ruling is prescribed in the Act itself and not in any delegated piece of legislation. If the line of argument advanced by the applicant is to be accepted, it would lead to the conclusion that the limitation provided under section 28(8) of the Act for adjudication of a show cause notice is merely procedural. In that event, the legal stipulation that if the show cause notice is not adjudicated within the time allowed, the result would that no notice has actually been issued, would become redundant. It is a settled proposition of law that any interpretation of law which leads to a manifest absurdity has to be eschewed. Besides, being a creature of statute, I am squarely bound by the four corners of the statute, and therefore, considering the express mandate of the statute, I find no reason to depart from it. The application was transferred to the secretariat of the CAAR, Mumbai in February, 2021. In the proceedings before me, I am now faced with the situation where the act of import is purportedly complete. According to section 28E(b) of the Act, "advance ruling means a written decision on any of the questions referred to in section 28H raised by the applicant in his application in respect of any goods prior to its importation or exportation." The very definition of advance ruling, as reproduced above, precludes any possibility of pronouncing any ruling in the present proceedings, where the act of import stands concluded. Besides, it also appears that the relevant imports have been subjected to provisional assessment. It is clear from a plain reading of section 2(2) of the Act that assessment includes provisional assessment and since the questions involved in the present proceedings are already pending in the applicant's case before an officer of customs, the proviso (a) to sub-section 2 of section 28-I of the Act does not allow me to pronounce any advance ruling as requested. It is settled law that assessment is a quasi-judicial proceeding requiring application of mind and speaking decisions. I am, therefore, not convinced with the argument that no independent proceeding is pending before any officer of customs, as argued by the applicant. I also take note of the fact that one of the questions raised in the application, i.e., eligibility for nil rate of duty under entry no. 446 of the notification no. 50/2017-Cus., dated 30.06.2017 has lost relevance in view of the amending notification no. 2/2021, dated 01.02.2021.

In light of the discussions in the preceding paragraph, without going into the merits of the application, I reject the application for advance ruling.




(M.R. MOHANTY) 27/04/22

Customs Authority for Advance Rulings,
Mumbai

This copy is certified to be a true copy of the ruling and is sent to: -

1. M/s Larsen & Toubro Ltd.-construction Heavy Civil Infrastructure Division, TC-III, Tower A, 4th Floor, P.B. No. 979, Mount Poonamallee Road, Manapakkam, Chennai, - 600 089
2. The Commissioner of Customs, Chennai-II (Import Commissionerate), Customs House, 60, Rajaji Salai, Chennai-600 001
3. The Customs Authority for Advance Rulings, New Delhi.
4. The Principal Chief Commissioner of Customs, Mumbai Customs Zone-I, Ballard Estate, Mumbai -400001.
5. The Chief Commissioner(AR), Customs Excise & Service Tax Appellate Tribunal (CESTAT), West Block-2, Wing-2, R.K. Puram, New Delhi- 110066.
6. The Member (L & J), CBIC, New Delhi.
7. Guard file.

(Ashok Kumar)
Secretary,
Customs Authority for Advance Rulings, Mumbai