

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

REGIONAL BENCH - COURT NO. 2

Excise Appeal No. 20476 of 2018

(Arising out of Order-in-Original No. COC-EXCUS-000-APP-02-2018 dated
18.01.2018 passed by the Commissioner of Central Excise(Appeals), Cochin)

Bharat Petroleum Corporation Ltd

I&C, Territory Kochi Refinery Marketing Office,
Ambalamughal, Cochin,
Kerala – 682302.

.....Appellant

VERSUS

Commissioner of Central Excise, Cochin

C.R. Building, IS press Road,
Cochin – 682018

.....Respondent

Appearance:

Mr. Bharat Raichandani, Mr. Raghul Piraanesh, Mr. Chandra Kiran, Advocates
for the Appellant

Mr. Vinod Kumar Garhwal, Authorised Representative (AR) for the Revenue

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 21784 /2025

Date of Hearing: 17.10.2025

Date of Decision: 17.10.2025

Per: Pullela Nageswara Rao

This appeal is filed against Order-in-Original No. COC-EXCUS-000-APP-02-2018 dated 18.01.2018 passed by the Commissioner of Central Excise(Appeals), Cochin.

2. The issue in the present appeal is whether the supplies of High Viscosity Furnace Oil (HVFO) made by M/s. BPCL to the vessel 'Cable

Ship ASEAN Explorer' qualify as duty-free exports under Rule 19 of the Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT), or whether such supplies are liable to Central Excise duty as the vessel cannot be considered as a "foreign-going vessel" under Section 2(21) of the Customs Act, 1962.

3. The brief facts are the appellant is engaged in the manufacturing of various petroleum products falling under Chapter 27 of the Central Excise Tariff Act, 1985 having Central Excise registration and also operates an Export warehouse. Appellant was using the service of private tank operators for the storage and barge delivery of the fuel to the vessels. Appellant is receiving the said 'NIL' Duty product under the cover of ARE-3 and warehousing the goods. Appellant stores the Furnace Oil (FO) i.e., 'Nil' Duty product into warehousing premises and further supplies the same as Bunker to Foreign Bound Vessels. The Department alleged that the appellant has supplied High Viscosity Furnace Oil (HVFO) as 'Nil' duty supplies of bunker to the vessel "Cable Ship Asean Explorer" on 30.12.2011 and 01.03.2012 which was not on a foreign run and was on coastal run and that the bunker supplies to "Cable Ship Asean Explorer" without payment of excise duty was with an intention to evade payment of duty and thus violated the provisions of Rule 4, 6, 8 and 19 of the Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT) dated 26.06.2001 by removing the excisable goods without payment of duty. Accordingly, show cause notice was issued invoking the extended period of limitation. Adjudication Authority confirmed the demand with interest and equal penalty. Aggrieved by the order the appellant filed an appeal before Commissioner (Appeals) and Commissioner (Appeals) rejected the appeal. Aggrieved by the impugned order, present appeal is filed.

4. Learned Counsel for the appellant during the hearing submits that the supplies were made under Rule 19 Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT) (export without payment of duty). The vessel's voyages were duly authorised by the Maritime Customs, Cochin, and supported by Port Clearances, Shipping Bills, and foreign

port acknowledgments. Appellant cleared 2(two) duty-free supplies of 'HVFO' from their Export Warehouse to the vessel 'Cable Ship ASEAN Explorer' owned by ASEAN Cables Ship Pvt. Ltd., Singapore, under the South East Asia and Indian Ocean Cable Maintenance Agreement (SEAIOCMA, dated 15.12.2005) for submarine cable maintenance and repair operations. The details of the clearances of HVFO are as below;

(Amt. in Rs.)

Date	Quantity (KL)	Value of Goods/ Excise Duty including Cess	ARE-1 No.	Voyage
30.12.2011	199.226	78,46,699/ 1131494	63/2011-12	Kochi-Colombo
01.03.2012	298.696	1,22,12,460 17,61,036	85/2011-12	Kochi-Singapore
TOTAL	497.922	2,00,59,159/ 28,92,530		

5. Further, Learned Counsel for the appellant submits that the entire demand is predicated on the finding in the Customs, Order-in-Original No. 01/2013 dated 04.04.2013, wherein it was held that the vessel 'Cable Ship ASEAN Explorer' ("the Vessel") was not a "foreign-going vessel" under Section 2(21) of the Customs Act, 1962, thereby denying duty-free treatment to bunker supplies. The Excise authorities merely adopted the Customs finding without conducting any independent verification or assessment of BPCL's supplies. Further Learned Counsel relied on the judgement of this Tribunal in the matter of **ASEAN Cables Ship Pvt. Ltd. Vs. Commissioner of Customs, Cochin, 2020 (374) E.L.T. 597 (Tri.-Bang.)**, wherein it is held that:-

"29. In view of the above, we find that the impugned vessel ASEAN Explorer is a foreign-going vessel, within the ambit of (ii) of Section 2(21) of the Customs Act, 1962, being engaged for performing repair/cable laying activities in the designated areas in terms of the Agreement with SEAIOCMA. The berthing of the vessel for long periods at Cochin Port does not alter this position and accordingly, the appellants are eligible to avail the exemption

contained under Section 87 of the Customs Act, 1962 on the ship stores. However, they are required to pay duty on the ship stores consumed only during the period the said vessel was performing its designated work in Indian territorial waters, for the normal period. As the vessel is held to be a foreign-going vessel and that the exemption under Section 87 of the Customs Act, 1962 is available, the seizure of the vessel and consequent imposition of redemption fine in lieu of confiscation need to be set aside along with penalties imposed on both the appellants."

6. The Department filed an appeal against the said Tribunal order before the Hon'ble High Court of Kerala, wherein the Hon'ble High Court of Kerala affirmed the CESTAT's order and dismissed the Department's appeal reported in **Commissioner of Customs, Cochin Vs. ASEAN Cables Pvt. Ltd., [(2025) 32 Centax 259 (Ker.)]**.

7. Learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order.

8. Heard both sides and perused the records.

9. We find that the issue has attained finality and the issue is no more *res-integra*, the Hon'ble High Court of Kerala in appellant own case has held as under:-

"11. On a consideration of the reasoning of the Tribunal, against the backdrop of the submissions made before us by the learned counsel, we find ourselves in complete agreement with the findings of the Tribunal. We cannot accept the contention of the learned Assistant Solicitor General that on account of the agreement entered into between the respondent and the Cochin Port Trust, committing to berth the vessel in Cochin Port for a specified number of days in a calendar year so as to obtain a concessional rate of berthing charges, and in fact remaining within territorial waters for a good part of the calendar year, the vessel will lose its status as a 'foreign going vessel'. The definition

of 'foreign going vessel' under Section 2(21) of the Customs Act reads as follows:

"2. Definitions

XXXXXXXXXXXXXXXXXXXX

(21) "foreign-going vessel or aircraft" means any vessel or aircraft for the time being engaged in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not, and includes-

(i) any naval vessel of a foreign Government taking part in any naval exercises;

(ii) any vessel engaged in fishing or any other operations outside the territorial waters of India;

(iii) any vessel or aircraft proceeding to a place outside India for any purpose whatsoever;"

12. The phrase 'engaged in' has to be read in the backdrop of the SEAIOCM Agreement, under which the engagement was effected. A reading of the terms of the agreement clearly showed that the obligation of the respondent under the time charter was to keep the vessel ready in all respects for carrying out the operations envisaged under the agreement and therefore, during the period under which it was on a time charter, the vessel had to be in a ready state to perform the obligations under the contract. Merely because the vessel was not actually engaged in repair activities on any one or more days during the time charter, it could not be said that the vessel was not engaged in the activities contemplated under the agreement. So long as it was under an existing obligation by contract to carry out the activities, the mere fact that on particular days, it was not actually engaged in carrying out those repair activities, was irrelevant.

13. We also cannot countenance the submissions of the learned Assistant Solicitor General that the commitment with regard to berthing of the Ship in Cochin Port Trust for specified number of days in a calendar year would deprive the vessel of its status as a foreign going vessel. The said arrangement between the Cochin Port Trust and the respondent was only with a view to get concessional rates of berthing charges and was wholly irrelevant for the purposes of determining its status as a foreign going vessel. Since we find the impugned order of the Tribunal to have correctly arrived at the finding with regard to the status of the vessel as a foreign going vessel, we also deem it appropriate to affirm the further findings of the Tribunal with regard to the entitlement of the respondent to the benefit of exemption under Section 87 of the Customs Act. While it may be a fact that the terms of an exemption provision under the taxing Statute have to be strictly construed against an assessee and in favour of the Revenue, we find the instant case to be one where the respondent vessel satisfies the definition of 'foreign going vessel' even without any strained interpretation of the words used in the Statute. It is therefore a clear case where the respondent vessel comes within the ambit of the phrase 'foreign going vessel' and therefore entitled to the benefit of exemption under Section 87 of the Customs Act.

We see no reason to interfere with the well-reasoned order of the Tribunal. This Customs Appeal therefore fails, and is accordingly dismissed, but without any order as to costs."

10. In view of the above discussion and following the decision of the Hon'ble High Court of Kerala, the bunker supplies of High Viscosity Furnace Oil (HVFO) made by M/s. BPCL to the vessel 'Cable Ship ASEAN Explorer', qualify as duty-free exports under Rule 19 of the Central Excise Rules, 2002 read with Notification No. 46/2001-CE(NT), therefore the impugned order is liable to be set aside.

11. Accordingly, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

*(Operative portion of the order was pronounced in open court
on conclusion of hearing.)*

(P.A Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member(Technical)

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