CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH – COURT NO. 03

CUSTOMS Appeal No. 11235 of 2014-DB

CUSTOMS CROSS Application No: 12703 of 2014

[Arising out of Order-in-Original/Appeal No 572-2013-CUS-COMMR-A--AHD dated 23.12.2013 passed by Commissioner of CUSTOMS-AHMEDABAD]

C.C.-Ahmedabad **.....Appellant**
Custom House,
Near All India Radio Navrangpura,
Ahmedabad,
Gujarat

VERSUS

Nandan Exim Limited **.....Respondent**
Survey No. 123/b, Saijpur,
Gopalpur Pirana Road, Piplej,
AHMEDABAD,
GUJARAT

APPEARANCE:
Shri Sanjay Kumar, Superintendent (AR) for the Appellant
Shri. P P Jadeja, Consultant for the Respondent

CORAM: HON'BLE MEMBER (TECHNICAL), MR. RAJU
HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

FINAL ORDER NO.A / 11597 /2023

DATE OF HEARING: 07.07.2023
DATE OF DECISION: 24.07.2023

SOMESH ARORA

The brief facts of the case are that the Respondent had filed refund claims in respect of additional duty of customs leviable under section 3 of the Customs Tariff Act, 1975 [called as **countervailing duty or CVD**) paid by them at the time of import of the goods i.e. 'Vat Indigo Blue Dyes', falling under CTH 3204. The assessment was done with the CVD @ 10% or 12 %, as the case may be. Whereas, as claimed by the appellant, they were not required to pay CVD at all in respect of goods of CTH 3204, being completely exempt by virtue of Notification No. 04/2006-CE dated 01.03.2006, under Sr.No.67,

during the period 1.03.2006 to 16.03.2012 and subsequently by Notification No.12/2012- CE, dated 17.03.2012. under Sr.No.133, during the period 17.03.2012 to 06.12.2012. The appellant-department assessed the Bills of Entries without granting exemption which as per respondent is a clerical error by the department as the latter should have given benefit of an **'unconditional notification'** even if not claimed by the respondent. After noticing this error in calculation of duty which resulted into excess payment of duty of Rs. 83.04.022/-, in respect of 26 Bills of Entries, the respondent requested for amendment of documents under section 154 read with section 149 of the Customs Act, 1962, assigning these omissions as non-claim of the exemption notification by them as well as 'clerical error' and also sought consequential refund. In all these cases, the duty was paid through debit in DEPB Scripts as evident from record. It was also specified in Para 12 of the OIO that the refund claims had been filed within one year of filing of Bill of Entry. A show cause notice No. VIII/20-364 to 451/ICD/REF/2012, dated 11.12.2012, was issued to the respondent, which was replied by them vide letter dated 01.3.2013. Upon adjudication of the matter by the OIO, the request of the respondent to amend Bills of Entry under section 154 read with section 149 of the Act as well as refund of the amount, purported to have been paid in excess, was rejected by the adjudicating authority, primarily on the following basis, as mentioned in Para 14 of the OIO, reproduced as under.

"From the above, it becomes clear that:

a. The claimant at the relevant time of filing all the 26 impugned Bills of Entry in the EDI System had failed to claim the benefit of Notification Nos. **4/2006-CE** [Sr. No. 67] and Notification No. 12/2012-CE (Sr. No. 133).

b. The claimant at the time of assessment of all the 26 Bills of Entry, had not requested for provisional assessment for ANY of them.

c. The claimant had not paid the assessed import duty **under protest**.

d. The claimant had not followed the legal procedure as laid down in the Customs Act, 1962 as they had not challenged the assessment of any of the 26 impugned Bills of Entry before the office of the Commissioner of Customs (Appeal).

2. Being aggrieved with the impugned order, the respondent filed the appeal before the Commissioner (Appeals)

3. The respondents during course of appeal relied upon the decisions of Aman Medical Products Ltd vs Commissioner of Customs, Delhi [2010 (250) ELT 30 (Del.)] and 1. Rings Ltd. Vs. CC/Air), Chennai 2006 (202) ELT 61 (Tri-Chennai. The Commissioner appeal allowed the appeal with reasons of the present respondent and directed bill of entry to be amended under the provisions of Section 149 of the Customs Act, 1962 by inserting the relevant notification and thereafter to reassess the same under Section 17 of the Act (ibid). Respondents also filed additional submissions on 14.07.2023, as per time frame allowed to both sides. They, inter alia, relied on the decision of Hon'ble Supreme Court as reported in 2019 (368) ELT 216 (S.C) in the matter of ITC Ltd V/s. C.C.E to buttress their point that order of self-assessment is also an appealable order.

4. The aforesaid Order in Appeal No. **572/2013/CUS/COMMR(A)/AHD** dated 23.12.2013. passed by Commissioner of Customs (Appeals). Ahmedabad, was examined by the Committee of Commissioner of Customs, Ahmedabad and Commissioner of Customs, Kandla constituted in pursuance to Notification No: 40/2005-Cus (NT) dated 13/05/2005, issued by the Board, vide F.No.C-50/04/2012-Ad.ll for the purpose of sub-section 2 of section 129

A of the Customs Act. 1962. Consequently, being aggrieved by the order of Commissioner (Appeals), as passed in OIA 572/2013/CUS/COMMR(A/AHD) dated 23.12.2013, department has preferred the present appeal.

5. Department through its AR has pressed for the following grounds:

> "(i) That "Self Assessment" in Customs has been implemented w.e.f. 08.04.2011 vide Finance Act, 2011. This had been well publicized and is available in the public domain. Self Assessment, *inter-alia*, required importers/exporters to correctly declare value. classification, description of goods etc. and also to claim the benefit of exemption notifications by themselves and assess the duty thereon, if any. The applicant merely stating in their defense submission dated 01.03.2013 "that the Customs had cleared the consignment on payment of duty including CVD without allowing such exemption" was not only erroneous but gravely misleading. After the implementation Self Assessment, it is not prerogative of the Customs Department to allow exemption, but in fact it is the prerogative of the importer to claim exemption if any. In fact, after the Introduction of Self assessment w.e.t. 08.04.2011, it is imperative that the importer in this case should have been more vigilant.
>
> (ii) Section 46 of the Customs Act, 1962 makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer. If the self assessment is found incorrect, the duty may be

reassessed. In both the cases, where self assessment is not done or when self assessment is done, invariably the reassessment is required under Section 17 and the importer or exporter can opt for **provisional assessment** of duty by the proper officer of Customs if they are not satisfied with the assessment. In this case, there was no request for provisional assessment and the assessment was final.

(iii) In the **EDI system**, whenever mistakes are noticed after submission of documents, amendment to the Bill of Entry is carried out with the approval of the Deputy/Asstt. Commissioner. The request for amendment may be submitted with the supporting documents. Further, in the EDI System any time after assessment and before Out of Charge Order, a Bill of Entry can be recalled and reassessed and put to re-assessment by the Dy/Asstt. Commissioner concerned, it so warranted for any reason. In the impugned case, the claimant had sufficient opportunities to notice their mistakes and request for amendment, which they had failed to do.

(iv) Thus, it is not in dispute that the refund claim was filed by the appellant after the impugned bills of entries had been assessed finally and the claimant had made the payment of assessed duty through scrips as mentioned supra. It is also not in dispute that the claimant had not claimed the benefit of exemption Notifications in all the impugned 26 Bills of Entries, which they filed over a period of 75 days, for the clearance of the goods. The appellant in this case having not claimed the benefit of notifications, at the time of filing Bill of Entry and

making payment of duty could have challenged the same. but they did not do so and filed a refund claim. The filing of refund claim for non-availment of the benefit of notifications would amount to opening the finally assessed Bills of Entry, as if refund claim would have got sanctioned, it would mean that Bills of Entries were assessed wrongly. The provisions of the Customs Act, 1962 do not permit this. The appellant should have chosen time tested path of appealing against the assessed Bill of Entry.

(v) The proper course of action in this case was to approach the appellate authority against the assessment order, if aggrieved, as held by the Hon'ble Supreme Court in the case of CCE, Kanpur Vs. Flock India P. Ltd. It is settled law by catena of decisions that, if the assessee has not claimed any benefit of notifications, then the assessing officer could not be blamed for the outcome, as held in CC. (Import and Gen.) Vs. Unicorn Medident P. Ltd.]. The Hon'ble Tribunal in the case of CC. (Import and Gen.) Vs. Unicorn Medident P. Ltd. on 7 February, 2006, further held that "Once an Order of Assessment is passed the duty would be payable as per that order. Unless that order of assessment has been reviewed under Section 18 and/or modified in as Appeal that Order stands. So long as the Order of Assessment stands the duty would be payable as per that Order of assessment. A refund claim is not an Appeal proceeding. The Officer considering a refund claim cannot sit in Appeal over an assessment made by a competent Officer. The officer considering the refund claim cannot also review an assessment order". Department also relies upon the decision in the case of

HINDALCO INDUSTRIES LTD. Versus COMMISSIONER OF CUSTOMS, AHMEDABAD [2013 (296) E.L.T. 383 (Tri. - Ahmd.).”

6. Learned AR relied upon the following judgments:

- 2000(120) ELT 285 (SC)-CCE, Kanpur Vs. Flock (I) P Ltd
- 2013 (296) ELT 283 (Tri.- Ahmd)- Hindalco Industries Ltd Vs. CC, Ahmdabad
- 2008 (225) ELT 113 (Tri- Mum)- CC (Imp), Mumbai Vs. LK Steel Factory P Ltd.
- 2006 (108) ECC 411- CC (Import and Gen Vs. Unicorn Medident P Ltd.
- 2007 (216) ELT 134 (Tri.- LB) CC, Nhava Sheva Vs. Eurotex Indus. & Exports Ltd.

7. As a counter, the respondents in their cross objections and during hearing have submitted as follows:

(i) The O-I-0 has not correctly appreciated that Appellant has submitted 26 applications with request to consider to allow benefits of exemption first for excess CVD paid and to allow such unconditional exemption, as the issue for allowing such exemption has attained its finality.

(ii) Revenue has filed this appeal only on the ground that without challenge to assessment, refund cannot be claimed. However, such incorrect assessment in all 26 Bill of Entry is challenged by Respondent through applications, wherein they have already requested in their covering letter to claims and in reply to SCN also that first assessment is required to be modified u/s 17(4) read-with section 149 of CA 1962 and after having modified assessment u/s 17(4) of CA 1962 and amendment u/s 149 of the 26 Bill of Entry then consequential benefit of excess CVD paid is required to be allowed. Further, there is no such

requirement that the assessment in the Bill of Entry can only be challenged before commissioner (Appeals). Section 17(4) read with section 149 of Customs Act 1962 has provided for modifying or revising assessment in the Bill of Entry by the assessing officer, based on the factual incorrectness of assessment pointed out to him/her. Respondent has already pointed out to the AC, Customs, ICD, Ahmedabad that they had inadvertently paid excess CVD duty and requested to take remedial actions in terms of section 17(4) read- with section 149 of the customs Act. Therefore, to held that the Respondent has not challenged assessment in Bill of Entries is factually incorrect. Therefore, the entire basis for revenue's Appeal is not correct and is bad in law and hence Appeal by revenue requires to be set dismissed. They also drew support from case reported in 2021(376) ELT 192 (Bom.) in the matter of Dimension Data India Pvt Ltd. V/s. C.C in this regard to argue that with in purview of Section 17(4), a reassessment on directions of superior judicial authorities can also be done.

(iii) Respondent rely upon the decisions In the case law reported in 1991 (55) E.L.T. 437 (S.C.) MANGALORE CHEMICALS & FERTILIZERS LTD., the Hon'ble Supreme Court has held as under :-

> *"Interpretation of statute Exemption and refund - Condition precedent - Distinction to be made between a procedural condition of a technical nature and a substantive condition- Non-observance of the former condonable while that of the latter not condonable as likely to facilitate commission of fraud and introduce administrative inconveniences.-*
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> *The consequences (denial of benefit) which Shri Narasimhamurthy (learned Counsel for the Revenue) 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. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. (1965 (3) SCR 626; 1989 (1) SCC 345; 1967 (1) WLR 1000 and "Statutory Interpretation" by Francis Bennion, 1984 edition, p. 683 relied on]. [para 11]

Interpretation of statute - Exemption how to be interpreted. -

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 by their Lordships). [para 12]

Exemption to be construed against the subject in case of ambiguity. -

There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax-payers and should be construed against the subject in case of ambiguity. [para 12]

Exemption - Burden on claimant to establish his case. -

It is an equally well-known principle that a person who claims an exemption has to establish his case. Indeed, in

> *the very case of M/s. Park Exports (P) Ltd. [1988 (38) EL.T. 741 (S.C.)] relied upon by Sri Narasimhamurthy, it was observed: "While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided." [para 12]*

In view of the facts of the matter and the above rulings and also when the prime conditions to allow CVD exemption are fully satisfied, the exemption claimed by the appellant after clearance of the goods is required to be allowed as a "Substantive benefit" available.

8. Revenue has not correctly appreciated that benefit of a Notification may be claimed, but when it is not claimed initially but it is available otherwise, even in self-assessment system, Customs department is required to extend benefit of the Notification, whether it has been claimed or otherwise. Government also cannot retain any amount with them when it is not payable in accordance with the law. There is no dispute by the revenue on availability of the said duty exemption. Respondent has claimed benefit of the Notification and it is available. Therefore, when the benefit of exemption, which is available otherwise has to be allowed, irrespective of the fact whether it was claimed at the time of import or not. The benefit of a notification cannot go away on the findings, as observed/recorded in this revenue appeal or 0-1-0. Adjudicating authority on one hand observes that "ignorance of law is no excuse" but on the other hand he has not correctly appreciated that it apply to both sides. Govt also can not retain such excess payment of CVD amount which is not required to be paid by importer in the law. In support, the advocate for appellant places reliance on the decision reported in 2007 (209) ELT 321 (S.C) in the matter of Share Medical Care V/s. UOI, to drive home their point that exemption can be claimed even at a later stage.

9. Revenue has relied upon but has not correctly appreciated and applied CBEC Circular No. 17/2011- Customs, dated 8-4-2011 which has clearly clarified and directed in its Para 4 which is reproduced :- "Under the new scheme of self-assessment, the Bill of or Shipping Bill that is self-assessed by importer or exporter, as the case may be, may be subject to verification with regard to correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported or export goods." This directive clearly shows that proper officers are also required to ascertain correctness of classification, value, rate of duty, exemption notification or any other relevant particular having bearing on correct assessment of duty on imported goods. The officers have not been given any immunity for closing any incorrect assessment made in self assessment system. This can also be further seen from the said Circular which shows as under :-

> *"Thereafter, if it is found that self-assessment of duty has not been done correctly by the importer or exporter, the proper officer may re-assess the duty. This is without prejudice to any other action that may be warranted under Customs Act, 1962. On re-assessment of duty, the proper officer shall pass a speaking order, if so desired by the importer, within 15 days of re-assessment. This requirement is expected to arise when the importer or exporter does not agree with re-assessment, which is different from the original self-assessment."*

Accordingly, the above findings in O-1-0 and revenue Appeal does not support the case of revenue in terms of CBEC Circular bearing No. 17/2011-Customs dated 8-4-2011, which has also casted obligatory responsibility of Re-assessment on the proper customs officer in such situation.

10. Revenue has relied upon Section 46 of the Customs Act, 1962 and contended that it makes it mandatory for the importer to make entry for the imported goods by presenting a Bill of Entry electronically to the proper officer

with correct assessment on self assessment system. However, Revenue has not correctly appreciated that even If the said self-assessment is found incorrect, duty be re-assessed by Revenue. In both the cases, where self-assessment is not done correctly or when self-assessment is found incorrect by Revenue, then invariably the re-assessment is required to be made under Section 17 ibid if the proper officer of Customs are not satisfied with the assessment. However, Revenue and 0-1-0 has not correctly appreciated that the said Notification has allowed exemption only when the importer proves that the imported goods of CTH 3204 or 3809 have been used for manufacture of "Textile and textile Articles". There was no dispute or disagreement from revenue that imported goods are not of CTH 3204 or they are not used "for manufacture of Textile and textile Articles". Thus, the prime condition for allowing duty exemption is not in any dispute from either side. The exemption should have been allowed, even when claimed after clearance of the goods. This O-1-A has simply earlier allowed appeals of the Respondent directing adjudicating assessing officer to allow exemption, Re-assess Bill of Entry u/s 17(4) and amend the Bill of Entries u/s 149 of the Customs Act 1962 and thereafter, allow the consequential benefit of Refund of the excess duty paid by Respondent at the time of clearance of imported goods. Thus, the O-1-A is completely acceptable as legal and proper.

11. When the Commissioner(Appeals) directed to re-assess the said Bill of Entry in terms of Notification, AC, customs, ICD, Ahmedabad should have first implemented the order and returned the excess amount recovered from the Respondent before filling this Appeal.

12. The entire basis for this revenue's appeal is that the respondent has not challenged assessment order before Commissioner(Appeals), whereas the respondent has taken a view that they have claimed benefit of Notification,

which was not claimed at the time of import and requested the AC, Customs, ICD, Ahmedabad to first allow them duty exemption under the respective notification and then allow them the consequential refund of excess duty paid. When there is no time limit for claiming re-assessment of duty in terms of section 17(4) ibid and amendment of Bill of Entries u/s 149 of the Customs Act 1962, Respondent is within four walls of the law only. Accordingly, the Commissioner(Appeals), Ahmedabad has passed the impugned O-I-A, directing the AC, Customs, ICD, Ahmedabad first to consider allowing duty exemption under the said Notification first and then to allow consequential benefits of excess duty paid, which is just and fair and does not require any further interference in this appeal proceedings. Accordingly, revenue's appeal filed deserves to be dismissed by this Hon'ble CESTAT, Ahmedabad in the interest of justice.

13. Considered. We find that the Commissioner (Appeals) has dealt with the question relating to redetermination of assessment after clearance of imported goods in para 8.1 to 12 of the impugned order. In brief, he relying upon various case laws finds that the exemption benefit if available can be claimed at any stage. He has also given a finding that the respondent was in a position to provide the required documents for amendment, which were available at the time of clearance and this would make the respondent eligible for amendment under Section 149 of the Act. He therefore, in his directions after noting that the refund was within time limit of Section 27 holds that amendment is required to be done as per Section 149 of the Customs Act, 1962 and thereafter any consequential benefit is required to be given as per the provision of Section 27 of the Customs Act, 1962. While setting aside the impugned order, he has given direction to the Adjudicating Authority that the bill of entry shall be amended under provision of Section 149 of the Customs Act, 1962, by inserting the relevant notifications claimed by the respondents.

Notification No. 4/2006-C.Ex dated 01.03.2006, during the period 1 March, 2006 to 16 March, 2012 and Notification No. 12/2012-C.Ex dated 17.03.2012 (Sl. No. 133), during the period 17.03.2012 to 06.12.2012, and thereafter, once amendment is carried out, the same shall be re-assessed under Section 17 of the Customs Act, following natural justice.

14. We find that the department is aggrieved with this order mainly on the ground that the once order of assessment is passed and the duty becomes liable to be paid, then unless the order of assessment has been reviewed under Section 18 or modified in appeal, the benefit of notification not claimed earlier cannot be claimed at appellate stage, after self assessment has been done and duty paid. We find that the Section 149 permits amendment to documents including bill of entry even after clearance but on the basis of documentary evidence, which ought to be in existence at the time the goods were cleared. In view of definite findings of the Commissioner (Appeals), while permitting amendment that no new documents are being used fo claim of exemption and consequent upon making such amendment the proper officer shall re assess the bill of entry as per provision of Section 17(4) of the Customs Act, 1962 which provision is reproduced below:

> *"Where it is found on verification, examination or testing of the goods or otherwise that the self assessment is not done correctly, the proper officer may, without prejudice to any other action which may be taken under this Act, re-assess the duty leviable on such goods."*

15. In view of above Section 17(4) allows re assessment of self assessment on verification, examination or testing of the goods or otherwise finding self assessment could be done correctly by the proper officer. We find that the expression "or otherwise" is comprehensive to include judicial orders directing the same, when self assessment was not proper. Therefore, the amendment

and reassessment to be carried out has been correctly allowed by the Commissioner (Appeals), and we find no infirmity in his order. Apart from above, the statutory provision of Section 149, expressly allows amendment to the party in case it is so applied for and sought by them even after clearance if same is based on pre-existing documents is also endorsed in the matter of M/s. Vivo India P Ltd Vs. Commissioner of Customs, and Appeal No. 51045 of 2020, vide order dated 04.10.2022. Same is also the ratio of Share Medical Care Vs. Union of India reported in 2007(209) ELT 321 (S.C), in which para 16-21 reproduced below deals with the issue:

> ***"16.*** *In the instant case, the ground which weighed with the Deputy Director General (Medical), DGHS for non-considering the prayer of the appellant was that earlier, exemption was sought under category 2 of exemption notification, not under category 3 of exemption notification and exemption under category 2 was withdrawn. This is hardly a ground sustainable in law. On the contrary, well settled law is that in case the applicant is entitled to benefit under two different Notifications or under two different Heads, he can claim more benefit and it is the duty of the authorities to grant such benefits if the applicant is otherwise entitled to such benefit. Therefore, non-consideration on the part of the Deputy Director General (Medical), DGHS to the prayer of the appellant in claiming exemption under category 3 of the notification is illegal and improper. The prayer ought to have been considered and decided on merits. Grant of exemption under category 2 of the notification or withdrawal of the said benefit cannot come in the way of the applicant in claiming exemption under category 3 if the conditions laid down thereunder have been fulfilled. The High Court also committed the same error and hence the order of the High Court also suffers from the same infirmity and is liable to be set aside.*
>
> ***17.*** *Strong reliance was placed by the respondents on a decision of this Court in Mediwell Hospital & Health Care Pvt. Ltd. v. Union of India & Ors., (1997) 1 SCC 759 : JT 1997 (1) SC 270. In Mediwell Hospital, the Court was considering the very same notification 64/88 and grant of exemption to hospital equipments imported by specified category of hospitals. The Court held that an Individual Diagnostic Centre if covered by the notification, could claim import of equipments without paying customs duty. But in*

case of failure on the part of the persons availing the benefit to satisfy conditions laid down in the notification, it is incumbent on the authorities to recover such duty.

18. *The Court stated;*

The competent authority, therefore, should continue to be vigilant and check whether the undertakings given by the applicants are being duly complied with after getting the benefit of the exemption notification and importing the equipment without payment of customs duty and if on such enquiry the authorities are satisfied that the continuing obligation are not being carried out then it would be fully open to the authority to ask the person who have availed of the benefit of exemption to pay the duty payable in respect of the equipments which have been imported without payment of customs duty. Needless to mention the government has granted exemption from payment of customs duty with the sole object that 40% of all outdoor patients and entire indoor patients of the low income group whose income is less than Rs. 500/- p.m. would be able to receive free treatment in the Institute. That objective must be achieved at any cost, and the very authority who have granted such certificate of exemption would ensure that the obligation imposed on the persons availing of the exemption notification are being duly carried out and on being satisfied that the said obligations have not been discharged they can enforce realisation of the customs duty from them.

19. *In the counter-affidavit, it has been asserted that in 'the light of the observations in Mediwell Hospital, the Director General of Health Services and Department of Health decided to review cases of all (396) beneficent institutions who had availed of benefits under notification 64/88, and the appellant was one of them. Since it was found that the appellant was not fulfilling the conditions set out in para 2 of the Table, the benefit was withdrawn.*

20. *In our opinion, the decision in Mediwell Hospital would not take away the right of the appellant to claim benefit under para 3 of the Table of exemption notification. If the appellant is not entitled to exemption under para 2, it cannot make grievance against denial of exemption. <u>But if it is otherwise entitled to such benefit under para 3, it cannot be denied either. The contention of the authorities, therefore, has no force and must be rejected."</u>*

(emphasis supplied)

> ***21.*** *For the foregoing reasons, the appeal deserves to be allowed and is accordingly allowed. The respondent-authorities are directed to re-consider the case of the appellant as to exemption in category 3 of the exemption notification strictly in accordance with law, on its own merits and without being inhibited by the observations made by us hereinabove. The appeal is allowed with costs."*

16. It is thus clear that the entitlement of a person, if it is eligible for exemption notification has to be liberally provided and amendment can be allowed even after clearance at any stage with in a reasonable time, as per law. Again, amendment once carried out, re assessment by the proper officer as per the direction of the higher Appellate Authority, shall definitely be the legal consequence to follow. We find that the Learned Commissioner (Appeals) has correctly interpreted the law by *Ex Visceribus Actus* by reading provisions of Section 149 relating to amendment of documents with Section 17 relating to various assessments, both of which were available with in the four corners of the statute and has correctly directed amendment and then reassessment under Section 17(4).

17. We, therefore uphold the order passed by Commissioner (Appeals). Accordingly, the appeal is rejected. Cross objections filed by the respondents is accordingly disposed of. Appeal is rejected.

(Pronounced in the open Court on 24.07.2023)

(RAJU)
MEMBER (TECHNICAL)

(SOMESH ARORA)
MEMBER (JUDICIAL)

PALAK