

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

REGIONAL BENCH- COURT NO. 3

CUSTOMS Appeal No. 10514-10598 of 2017

(Arising out of OIA-MUN-CUSTOM-000-APP-381-465-16-17 Dated-22/12/2016 passed by Commissioner of CUSTOMS-AHMEDABAD)

Sedna Impex India Pvt Ltd

.....Appellant

105,H-3, Vardhman Plaza Tower,
District Centre,
Netaji Subhash Place Pitampura
New Delhi,New Delhi

VERSUS

C.C.-MUNDRA

.....Respondent

Office of the Principal Commissionerate of Customs,
Port User Buld.
Custom House Mundra,
Mundra,
Kutch
Gujarat-370421

APPEARANCE:

Shri Vikas Mehta, Consultant for the Appellant
Shri. Vinod Lukose, Superintendent (AR) for the Respondent

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

Final Order No. A/ 10106-10190 /2022

DATE OF HEARING:26.10.2021
DATE OF DECISION:18.02.2022

RAMESH NAIR

The issue involved in all these appeals are identical. Therefore, all these appeals are taken up together for disposal.

2. Brief facts of the case are that Appellant has imported the consignments of Polyester Knitted Fabrics vide Bills of Entry which were assessed and cleared for home consumption on payment of Customs duty including CVD. They are not availing the Cenvat Credit on the inputs under the provisions of Cenvat Credit Rules 2004. Therefore, challenged the assessment before the Commissioner (Appeals) and has claimed the benefit of Notification No. 30/2004-CE dated. 19.07.2014 as amended by Notification No. 34/2015-CE dated. 17.07.2015. The Ld. Commissioner (Appeals) vide impugned order has denied the benefit of the said notification on the ground that the condition provided in the proviso has not been complied. Aggrieved by the said order, the appellant have filed these appeals

3. Shri Vikas Mehta, Learned Consultant appearing on behalf of the appellant submits that due to oversight, the appellant had not claimed exemption from payment of Additional Duty of Customs under Section 3 of the Customs Tariff Act, 1975, which is equal to Excise Duty leviable on like goods as provided under Notification No. 30/2004 -CE as amended. That realizing their mistake, the Appellant challenged the assessment. The impugned order is contrary to Board Circular No. 1005/12/2015-CX dated. 21.07.2015

4. He also submits that case of PRASHRAY OVERSEAS PVT. LTD. 2016 (338) ELT 44(Mad.) has not been followed by Hon'ble CESTAT in the case of ENTERPRISES INTERNATIONAL LTD. 2017(346) ELT 423 (Tri. Chennai) and entitlement of appellant-importer therein to exemption under Notification No. 30/2004-C.E. dated 09.07.2004 has been duly upheld by rejecting the appeal filed by department. Hon'ble CESTAT followed the decisions of Hon'ble Supreme Court in SRF LTD., VS COMMISSIONER 2015 (318) ELT 607 (S.C.) and AIDEK TOURISM SERVICE PVT. LTD. Vs COMMISSIONER 2015 (318) ELT3 (S.C.). The other reasoning advanced by Ld. Commissioner that no protest was filed at the time of assessment is not tenable in light of Judgment of Bombay High Court in case of HERO CYCLES LTD. 2009 (240) ELT 490 (Bom.) where it is held that a duty was cast on the assessing officer

to consider the exemption notification, even if his attention was not drawn by the party. The SLP filed by the department has since been dismissed.

5. He also submits that issue is now covered by the various decisions of different courts on the subject matter. Reliance in this regard is placed on M/s ARTEX TEXTILE PVT. LTD. VS COMMISSIONER OF CUSTOMS ICD PATPARGANJ & OTHES ICDS, NEW DELHI vide final Order No. 50953-50954/2019 dated 24.07.2019.

6. On the other hand, Shri. Vinod Lukose, Learned Superintendent (Authorized Representative) appearing for the Revenue submits that the conditions of the notification have not been complied with and as such, the benefit provided therein is not available to the appellant. To support such stand, he has relied upon on the judgment of the Hon'ble Madras High Court in the case of COMMR.OF CUS. (EXPORTS), CHENNAI Vs PRASHRAY OVERSEAS PVT. LTD. - [2016 \(338\) E.L.T. 44](#) (Madras).

7. We have carefully considered the submissions made by both the sides and perused the records. We find that in the present case the appellant at the time of clearance of imported goods did not avail the exemption Notification No.30/2004-CE dated 09.07.2004 which provides exemption from Countervailing Duty (CVD). In order to claim the exemption notification, the appellant challenge the Bill of Entry assessment before the Commissioner (Appeals) who has rejected the appeal on the following two grounds.:-

- i) The appellant has not lodged any protest at the time of assessment.
- ii) The appellant has failed to fulfill the conditions of Notification No. 30/2004-CE dated 09.07.2004 as amended i.e. non taking of Cenvat Credit on inputs/capital goods.

We find that the appellant in principle entitle for exemption Notification as the condition of non availment of Cenvat Credit need not to be satisfied by the importer in respect of imported goods. The same has been clarified by the Central Board of Excise and Customs vide Circular No. 1005/12/2015-CX dated 21.07.2015. The same is reproduced below:-

Circular No. 1005/12/2015-CX, dated 21-7-2015

Make in India Policy – Removal of disadvantage to domestic manufacturers vis-a-vis importers

Circular No. 1005/12/2015-CX., dated 21-07-2015

F. No. 336/4/2015-TRU

Government of India
Ministry of Finance (Department of Revenue)
Central Board of Excise & Customs, New Delhi

Subject : Judgment of the Supreme Court in the case of M/s. SRF Ltd. versus Commissioner of Customs, Chennai - Clarification relating to notifications No. 30/2004-Central Excise, dated 9-7-2004. No. 1/2011-Central Excise dated 1-3-2011 and No. 12/2012-Central Excise dated 17-3-2012, as amended - Regarding.

It may recalled that the Hon'ble Supreme Court, in the case of M/s. SRF Ltd. versus Commissioner of Customs, Chennai and M/s. ITC Ltd. v/s. Commissioner of Customs (I&G), New Delhi [[2015 \(318\) E.L.T. 607](#) (S.C.)] relating to CVD exemption, has held that the benefit of excise duty exemption [available to final products manufactured by the domestic manufacturer, subject to the condition of non-availment of CENVAT credit of duty on inputs or capital goods used by such manufacturer for manufacture of such final products] will also be available to the importers of such final products for the purposes of CVD on the ground that the importer was not availing the credit of duty on inputs or capital goods.

2. The implication of the Hon'ble Supreme Court judgment was that all such final products when imported by manufacturer importer would have attracted concessional excise duty as CVD, while the domestic manufacturer of such final products had to forgo input tax credit to be eligible for such concessional rate. This would put the domestic manufacturers at a disadvantage vis-a-vis imports and would adversely impact the Make in India Policy of the Government.

3. The judgment of the Hon'ble Supreme Court was examined in CBEC and it was found that there were certain errors apparent on record/interpretational issues and. with the concurrence of the Ld. Attorney General, a Review Petition/Revision Application has been filed against the same.

4. However, keeping in view the adverse implications of the aforesaid judgment on the domestic industry, legal opinion was sought from the Ministry of Law & Justice as to whether pending the aforesaid Review Petition/Revision Application, such conditions in the relevant notifications be suitably amended so as to make the intention abundantly clear (that these conditions are to be satisfied by the manufacturers of such goods and not the buyer/importer of such goods).

5. In this context, opinion of the Ministry of Law & Justice was also sought. With the concurrence of the Ld. Attorney General, notifications No. 34/2015-C.E., No. 35/2015-C.E. and No. 36/2015-C.E. all dated 17-7-2015 were issued amending the conditions in notifications No. 30/2004-C.E., dated 9-7-2004, No. 1/2011-C.E., dated 1-3-2011 and No. 12/2012-C.E. dated 17-3-2012, respectively.

6. In the above context, apprehensions have been raised about the use of the phrase of "appropriate duty". In this regard. Explanations have been inserted in the notifications No. 30/2004-C.E., dated 9-7-2004, No. 1/2011-C.E., dated 1-3-2011 and No. 12/2012-C.E., dated 17-3-2012 so as to clarify that the appropriate duty or appropriate additional duty or appropriate service tax for the purposes of the said notifications/entries includes nil duty or tax or concessional duty or tax, whether or not read with any relevant exemption notification for the time being in force.

7. It may, therefore, be noted that the domestically manufactured goods covered under these notifications/entries continue to be exempt from excise duty or subject to concessional rate of excise duty, as the case may be, as they were prior to 17th July, 2015.

8. Trade Notice/Public Notice may be issued to the field formations and taxpayers.

9. Difficulties faced, if any, in implementation of this Circular may be brought to the notice of the Board.

The above circular was issued as a consequent to the Hon'ble Supreme Court judgment in the case of SRF LTD. VS. COMMISSIONER OF CUSTOMS, CHENNAI-2015 (318) ELT 607 (S.C.) and AIDEK TOURISM SERVICE PVT. LTD Vs. COMMISSIONER OF CUSTOMS, NEW DELHI- 2015 (318) ELT 3 (S.C.). Wherein, it was held that the condition of non availment of Cenvat Credit on input/capital goods need not to be satisfied by the buyer/importer of such goods. In view of the above circular, the appellant was entitled for exemption from CVD at the time of clearance of the imported goods in terms of Notification No.30/2004-CE dated 09.07.2004. Needless to say that, it is a settled legal position by the Hon'ble Apex Court that board circular/instructions are binding on the departmental officers. Therefore, the Assessing Officers while assessing the Bill of Entry was duty bound to verify the eligibility of the exemption Notification No. 30/2004-CE and to extend the benefit of the same. However, the Assessing Officer has not given any heed in extending the benefit of the said notification. In this fact, it cannot be expected from the appellant to lodge any protest as they have also paid duty oversightly without claiming such notifications. Therefore, we do not agree with the contention of the Learned Commissioner that since the appellant have not lodged any protest the benefit of notification cannot be given. We further note that it is a settled law in various judgments that the benefit of exemption notification can be claimed at any stage, therefore, even after clearance of goods when the exemption benefit claimed the same should be extended to the assessee. As regard, the other ground of rejection by the Commissioner (Appeals) that the appellant have not satisfied the condition of non taking of Cenvat Credit on inputs/capital goods, the very same issue has been dealt in above referred board circular dated 21.07.2015 by considering as settled legal issue by the Hon'ble Supreme Court in the case of SRF LTD. (Supra). Therefore, in the present case the appellant have imported the goods, hence, the condition of notification i.e. non taking of Cenvat Credit on input/capital goods need not to be satisfied. The lower authorities have taken support of the decision in the case of PRASHRAY OVERSEAS PVT LTD-2016 (338) ELT 44 (Mad.). This Tribunal in the case of ENTERPRISES INTERNATIONAL LTD.-2017 (346) ELT 423 (TRI.-CHENNAI).

Even after considering the judgment in case of PRASHRAY OVERSEAS PVT LTD (Supra) held that the exemption Notification No. 30/2004-CE in respect of CVD on imported goods is admissible. The relevant order in ENTERPRISES INTERNATIONAL LTD (Supra) is reproduced below:-

"11. We have carefully considered the submissions of both sides and also perused the records, case laws and the Revenue's grounds of appeal. The short issue in all these Revenue appeals against the admissibility of CVD exemption on the imported goods i.e. Silk Yarn and Silk Fabrics under Notification No. 30/2004-C.E., dated 9-7-2004 where LAA has allowed the benefit. We find that the respondents appealed against the assessment of Bill of Entries where CVD has been charged without giving the benefit of the notification. The LAA in the impugned orders while allowing the appeal has discussed the issue in detail and also relied on this Tribunal's Division Bench decisions in the case of Prashray Overseas Pvt. Ltd. (supra) and also relied Tribunal's decision in Nhava Sheva v. Ashima Dyecot Ltd. (supra) and Mapsa Tapes Pvt. Ltd. case (supra).

12. On perusal of the grounds of appeal already reproduced above, the Revenue's contention that LAA has not considered the Tribunal's Larger Bench decision in the case of Priyesh Chemicals & Metals v. CCE, Bangalore (supra) and further contended that this Chennai Tribunal's Bench decision in the case of Prashray Overseas Pvt. Ltd. (supra) relied by LAA has not attained finality as Revenue preferred appeal against Tribunal order before the Hon'ble High Court, Madras which is still pending. Revenue also contended that notification in question should have been given effect to prospectively and the condition stipulated in the notification is only for local manufacturer of goods and not for importer. We find that this very ground advanced by the Revenue has already been dealt with in detail and decided by this Tribunal Bench in the case of M/s. Prashray Overseas Pvt. Ltd. in the orders reported in [2008 \(232\) E.L.T. 63](#) (Tri.-Chen.) and [2009 \(235\) E.L.T. 300](#) (Tri.-Chennai) where the issue of grant of CVD exemption under Notification No. 30/2004-C.E., dated 9-7-2004 has been discussed and allowed appeals. The LAA has rightly relied on the Tribunal's orders (supra) which is binding on him and allowed the appeals. Merely for the reason Revenue filed appeal before Hon'ble High Court, Madras cannot be a ground to deny the benefit allowed by this Bench as no stay granted by the High Court. Therefore, once the Tribunal has already decided the issue and the decision has not been set aside and there appears to be no error on the part of the LAA relying on this Tribunal's decision. In view of Hon'ble Supreme Court relying in the case of Union of India v. Kamlakshi Finance Corporation Ltd. - [1991 \(55\) E.L.T. 433](#) (S.C.), this Bench decision is binding on the jurisdictional lower authorities and they are bound to follow the said decision. On this account alone, the Revenue's appeals are liable to be rejected.

13. On the question of admissibility of CVD exemption, we find the Notification No. 30/2004-C.E., dated 9-7-2004 at Sl. No. 5 of table exempts excise duty on silk yarn and silk fabrics falling under Chapters 54.01 to 54.07. The proviso to the notification stipulates a condition that "nothing contained in this notification shall apply to the goods in respect of which credit of duty on inputs or capital goods has been taken under the provisions of the CCR, 2002." This very issue was discussed in the case of Prashray Overseas Pvt. Ltd. [[2009 \(235\) E.L.T. 300](#) (Tri.-Chennai)]. The relevant Paragraph 3 of the order is reproduced as under :-

"3. We find that no Central Excise duty is payable on raw silk produced in India. Yarn manufactured from such silk is also exempt under Notification No. 30/2004 as no credit availed input is used to manufacture silk yarn. Therefore indigenous silk fabrics manufactured from indigenous silk yarn are exempt from Central Excise duty. Another

stream in which silk fabrics get manufactured in India is using imported silk yarn. Neither party disputes that imported silk yarn was exempt from CVD during the material period in terms of Notification No. 20/2006-Cus., dated 1-3-2006. We find that the levy of CVD on imports is regulated by the following provisions of the Customs Tariff Act, 1975.

"3. Levy of additional duty equal to excise duty. - Any article which is imported into India shall, in addition, be liable to a (1) duty (hereafter to this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article."

CVD is therefore payable on imported silk fabrics at the rate central excise duty is leviable for the time being on such silk fabrics produced or manufactured in India. Additional duty is imposed on imported goods to counter balance the central excise duty leviable on like articles made indigenously, this being a measure intended to safeguard the interests of the manufacturers in India. As no duty was payable on silk yarn either indigenous or imported, indigenous silk fabrics were not subject to central excise duty during the material period in terms of Notification No. 30/04-C.E. (supra). Therefore imported silk fabrics imported during the material period need not bear any CVD. The impugned imports are eligible for the exemption contained in Notification No. 30/2004. This was also the ratio of our final order Nos. 941, 942/2008, dated 28-8-2008 [2008 (232) E.L.T. 63 (Tribunal)] in respect of the same appellants for 44 consignments imported earlier. The appeal is allowed."

14. We find that Revenue relied on the Supreme Court's decision in the case of Motiram Tolaram v. UOI (supra) and the Tribunal's Larger Bench decision in Priyesh Chemicals & Metals (supra). In this regard the Hon'ble Supreme Court in their recent order in the case of SRF Ltd. v. CC, Chennai (supra) held that the appellants are entitled to exemption from payment of CVD under Notification No. 6/2002 and allowed the civil appeal. The relevant Paras 3 to 8 of the said Supreme Court's order is reproduced as under :-

"3. Entry/Serial No. 122 in the Notification No. 6/2002 reads as under -

S. No.	Chapter or heading No. or sub-heading No.	Description of goods	Rate under the First Schedule	Rate under the Second Schedule	Condition No.
122	5402.10	Nylon filament	Nil	-	20
	5402.41	Yarn or			
	5402.49	Polypropylene			
	5402.51	multifilament			
	5402.59	yarn of 210			
	5402.61 or 5402.69	deniers with tolerance of 6 per cent.			

4. As per the aforesaid entry, the rate of duty is nil. Condition No. 20 of this Notification, which was relied upon by the authorities below in denying the exemption from payment of CVD, is to the following effect :

"20. If no credit under rule 3 or rule 11 of the Cenvat Credit Rules, 2002, has been taken in respect of the inputs or capital goods used in the manufacture of these goods."

5. The aforesaid condition is to the effect that the importer should not have availed credit under rule 3 or rule 11 of the Cenvat Credit Rules,

2002, in respect of the capital goods used for the manufacture of these goods.

6. In the present case, admitted position is that no such Cenvat credit is availed by the appellant. However, the reason for denying the benefit of the aforesaid Notification is that in the case of the appellant, no such credit is admissible under the Cenvat Rules. On this basis, the CEGAT has come to the conclusion that when the credit under the Cenvat Rules is not admissible to the appellant, question of fulfilling the aforesaid condition does not arise. In holding so, it followed the judgment of the Bombay High Court in the case of *Ashok Traders v. Union of India* [[1987 \(32\) E.L.T. 262](#)], wherein the Bombay High Court had held that "it is impossible to imagine a case where in respect of raw naphtha used in HDPE in the foreign country, Central Excise duty leviable under the Indian Law can be levied or paid." Thus, the CEGAT found that only those conditions could be satisfied which were possible of satisfaction and the condition which was not possible of satisfaction had to be treated as not satisfied.

7. We are of the opinion that the aforesaid reasoning is no longer good law after the judgment of this court in *Thermax Private Limited v. Collector of Customs (Bombay), New Customs House* [1992 (4) SCC 440] = 2002-TIOL-683-SC-CUS-LB which was affirmed by the Constitution Bench in the case of *Hyderabad Industries Limited v. Union of India* [1999 (5) SCC 15] = 2002-TIOL-369-SC-CUS-CB. In a recent judgment pronounced by this very Bench in the case of *AIDEK Tourism Services Private Limited v. Commissioner of Customs, New Delhi* (Civil Appeal No. 2616 of 2001) = 2015-TIOL-23-SC-CUS, the principle which was laid down in *Thermax Private Limited* and *Hyderabad Industries Limited* was summarised in the following manner :-

"15. The ratio of the aforesaid judgment in *Thermax Private Limited* (supra) was relied upon by this Court in *Hyderabad Industries Ltd.* (supra) while interpreting Section 3(1) of the Tariff Act itself; albeit in somewhat different context. However, the manner in which the issue was dealt with lends support to the case of the assessee herein. In that case, the court noted that Section 3(1) of the Tariff Act provides for levy of an additional duty. The duty is, in other words, in addition to the customs duty leviable under Section 12 of the Customs Act read with Section 2 of the Tariff Act. The explanation to Section 3 has two limbs. The first limb clarifies that the duty chargeable under Section 3(1) would be the excise duty for the time being leviable on a like article if produced or manufactured in India. The condition precedent for levy of additional duty thus contemplated by the explanation deals with the situation where 'a like article is not so produced or manufactured'. The use of the word 'so' implies that the production or manufacture referred to in the second limb is relatable to the use of that expression in the first limb which is of a like article being produced or manufactured in India. The words 'if produced or manufactured in India' do not mean that the like article should be actually produced or manufactured in India. As per the explanation if an imported article is one which has been manufactured or produced, then it must be presumed, for the purpose of Section 3(1), that such an article can likewise be manufactured or produced in India. For the purpose of attracting additional duty under Section 3 on the import of a manufactured or produced article the actual manufacture or production of a like article in India is not necessary. For quantification of additional duty in such a case, it has to be imagined that the article imported had been manufactured or produced in India and then to see what amount of excise duty was leviable thereon."

8. We are of the opinion that on the facts of these cases, these appeals are squarely covered by the aforesaid judgments. We accordingly hold that appellants were entitled to exemption from payment of CVD in terms of Notification No. 6/2002. The appeals are allowed and the demand of CVD raised by the respondents-authorities is set aside."

The ratio of the Apex Court's decision is squarely applicable to the present case where CVD exemption was denied under Notfn. No.

30/2004 where the proviso to the notification stipulated the condition that the exemption is not applicable if credit of duty on inputs or capital goods has been taken under CCR.

15. Further, we find the Hon'ble Apex Court in the case of AIDEX Tourism Services Pvt. Ltd. v. CC (supra) has not only considered the cases of Thermax Private Ltd. and Hyderabad Industries Ltd. but also discussed the Apex Court's decision in the case of Motiram Tolaram v. UOI (supra). The relevant para is extracted hereinunder :-

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This position has been reiterated in Motiram Tolaram v. Union of India - (1999) 6 SCC 375 = [1999 \(112\) E.L.T. 749](#) (S.C.), CCE v. J.K. Synthetics - (2000) 10 SCC 393 = [2000 \(120\) E.L.T. 54](#) (S.C.), Lohia Sheet Products v. Commr. of Customs - (2008) 11 SCC 510 = [2008 \(224\) E.L.T. 349](#) (S.C.) and Collector of Customs (Preventive) v. Malwa Industries Ltd. - (2009) 12 SCC 735 = [2009 \(235\) E.L.T. 214](#) (S.C.). In fact, in Lohia Sheets and Malwa Industries cases (supra), this Court was considering exemption notifications envisaging use of certain material within a "factory" and still held that an importer would be entitled to the benefit of the exemption notifications in view of Section 3 of the Tariff Act and the decisions in Hyderabad Industries and Thermal cases. As such, it is now settled that the rate of duty would be only that which an Indian manufacturer would pay under the Excise Act on a like Article. Therefore, the importer would be entitled to payment of concessional/reduced or nil rate of countervailing duty if any notification is issued providing exemption/remission of Excise duty for a like article if produced/manufactured in India.

16. We may mention that in the case of Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors. - (2011) 1 SCC 236 = [2010 \(260\) E.L.T. 3](#) (S.C.), a three Judge Bench of this Court had raised certain doubts on the correctness of the principle contained in Thermax Private Limited (supra) as well as in J.K. Synthetics (supra) and referred the matter to a larger Bench. Reference order is reported as (2005) 8 SCC 164 = [2005 \(188\) E.L.T. 353](#) (S.C.). The Constitution Bench decided the said case, which is reported as (2011) 1 SCC 236. From the reading of paras 39 to 41 of the said judgment it becomes clear that though these cases were held not applicable to the fact situation and were distinguished, the Court did not say that the aforesaid judgments were incorrectly decided. In fact, by distinguishing the ratio of the said cases, the Constitution Bench impliedly gave its imprimatur to the principle laid down in the aforesaid judgments."

16. In view of the above ruling by Apex Court, we are unable to accept the Revenue's plea that the Apex Court decision of SRF Ltd. and M/s. Motiram Tolaram are in direct conflict. Hon'ble Supreme Court has clearly considered all the previous decisions of Apex Court including the decision in the case of Motiram Tolaram v. UOI (supra). Therefore, the Revenue relying on the above case law and also the LB decision in the case of M/s. Priyesh Chemicals & Metals (supra) are not relevant. In view of the latest decision of Apex Court in SRF case & AIDEX Tourism Services Pvt. Ltd., the issue of CVD exemption under Notfn. No. 30/2004 on imported goods has attained finality. This Tribunal Bench decisions in the case of M/s. Prashray Overseas Pvt. Ltd. v. CC, Chennai stands confirmed by the Hon'ble Supreme Court in the above decision.

17. Before parting, we wish to record that the respondents repeatedly pleaded that under ICES-EDI system the Notification No. 30/2004-C.E., dated 9-7-2004 has not yet been uploaded and not figuring in the system for assessment even after a decade. This fact was already reported in this Tribunal order dated 10-8-2010 in the case of M/s. Elegant Fabric v. CC, Chennai (supra). Therefore, we bring to the notice of the Chairman, C.B.E. & C. & DG (Systems), C.B.E. & C., New Delhi to rectify and upload the said notification in the EDI system at the earliest so that the Trade need not seek every time for manual assessment of Bill of Entry or file

appeal against every assessed Bill of Entry under EDI before Commissioner (Appeals) as is happening at present in the Custom House.

18. *By respectfully following the ratio of the Apex Court decisions (supra), we hold that the respondents are eligible for CVD exemption under Notification No. 30/2004-C.E., dated 9-7-2004. In view of the foregoing discussions, we hold that there is no infirmity in the orders of LAA and the same are upheld and all the Revenue's appeals are rejected. The cross objections filed by respondent get disposed. Copy of order be forwarded to the Chairman, C.B.E. & C. and D.G. System, New Delhi."*

The above decision has been delivered considering the Hon'ble Supreme Court judgment in the case of SRF LTD. VS. COMMISSIONER OF CUSTOMS, CHENNAI-2015 (318) ELT 607 (S.C.) and AIDEK TOURISM SERVICE PVT. LTD Vs. COMMISSIONER OF CUSTOMS- 2015 (318) ELT 3 (S.C.), therefore, the sole reliance of the Revenue in the case of PRASHRAY OVERSEAS PVT LTD (Supra) is of no help to revenue.

8. As per our above discussion and findings and settled legal position as discussed above, the appellant are clearly entitled for the exemption Notification No. 30/2004-CE dated 09.07.2004 for exemption from CVD on the imported goods.

9. Accordingly, the impugned order is set aside. Appeals are allowed with consequential relief.

(Pronounced in the open court on 18.02.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)