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

REGIONAL BENCH – COURT NO. 03

Excise Appeal No. 349 of 2011

[Arising out of OIA-COMMR-A-/367/VDR-I/2010 dated 30/11/2010 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Arcons Infrastructure And Construction Pvt Ltd **.....Appellant**
Nagpur Road, Chhindwara,
Chhindwara
Madhya Pradesh

VERSUS

C.C.E. & S.T.-Vadodara-i **.....Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

WITH

Excise Appeal No. 350 of 2011

[Arising out of OIA-COMMR-A-/318/VDR-I/2010 dated 22/11/2010 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

Unitech Ltd **.....Appellant**
Unitech House, South City-I,
Gurgaon', Haryana

VERSUS

C.C.E. & S.T.-Vadodara-i **.....Respondent**
1st Floor...Central Excise Building,
Race Course Circle,
Vadodara,
Gujarat-390007

APPEARANCE:
None appeared for the Appellant
Shri Dharmendra Kanjani, Superintendent, Authorized Representative for the Respondent

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

FINAL ORDER NO.A / 10541-10542 /2022

DATE OF HEARING/DECISION: 18.05.2022

RAMESH NAIR

The issue involved in the present case is whether the appellant is entitled for refund of additional duty of Rs. 2000/- per KL on Diesel when goods were supplied under Notification No. 108/95-CE.

2. The matter was called out and none appeared on behalf of the appellant despite notice it is observed that the matter was listed on number of times but none appeared. Accordingly the appeal is taken for disposal.

3. Shri Dharmendra Kanjani, Learned Superintendent (Authorized Representative) appearing on behalf of the revenue submits that the exemption under Notification No.108/95-CE is provided only in respect of Rs.2000/-. i.e. a duty of excise levied under section 3 of Central Excise, Act 1944 and the additional duty or excise duty thereon under sub section (1) of Section 3 of Additional Duty of Excise (Goods of Special Importance) Act, 1957. It is his submission that since the duty on which the refund was sought by the appellant is not covered under the Notification they were not eligible for exemption and consequential refund. He also relied upon the judgment in against UNICORN INDUSTRIES Vs. UNION OF INDIA- 2019 (370) E.L.T. 3(S.C) and COMMISSIONER OF CUS.(IMPORT),MUMBAI Vs. DILIP KUMAR & COMPANY- 2018 (361) E.L.T. 577 (S.C)

4. I have carefully considered the submissions made by both the sides and perused the records. I find that the appellant have claimed the exemption and consequential refund in respect of the additional duty of Rs. 2000/- per KL on HSD. This duty was levied under Section 133 of the Finance Act, 1999 as amended by Section 120 of Finance Bill, 2005 for Notification No. 108/95-CE which reproduced below:

"***Exemption to goods supplied to UN or an International Organisation:***

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944, (1 of 1944) read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said goods) when supplied to the United Nations or an international organisation for their official use or supplied to the projects financed by the said United Nations or an international organisation and approved by the Government of India, from the whole of –

(i) the duty of excise leviable thereon under section 3 of the Central Excises and Salt Act, 1944 (1 of 1944); and

(ii) the additional duty of excise leviable thereon under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) :

> *Provided that before clearance of the said goods, the manufacturer produces before the Assistant Commissioner of Central Excise having jurisdiction over his factory, a certificate from the United Nations or an international organisation that the said goods are intended for official use by the said United Nations or the said international organisation or are to be supplied to a project financed by the said United Nations or the said international organisation and the said project has duly been approved by the Government of India.*
>
> *Explanation. - For the purpose of this notification, "international organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), that the provisions of the Schedule to the said Act shall apply."*

From the above it is clear that the exemption is in respect of the duty mentioned that covered under Section 3 and the additional duty on excise liveable thereon under sub section 1 of section 3 of additional duty of excise (Goods of Special Importance) Act, 1957.However, in the present case the duty for which the exemption and refund is claimed is not covered by the Notification as the same was imposed under Section 133 of the Finance Act 1999 as amended issue of Section 120 of Finance Bill, 2005. Therefore, the duty which is not mentioned in the Notification cannot be given exemption. My afore said view is reinforced by the law laid down by the Hon'ble Supreme Court in the case of UNICORN INDUSTRIES Vs. UNION OF INDIA-2019 (370) E.L.T. 3(S.C), wherein it was categorically held that the duty which is not exempted cannot be given exemption under the guise of duty of excise. Hence, the appellant is not neither entitled for the exemption nor for the refund of the cenvat credit. Accordingly, the impugned order has not suffered from any infirmity.

5. Accordingly, the same is upheld. Appeals are dismissed.

(Dictated & Pronounced in the open Court)

RAMESH NAIR
MEMBER (JUDICIAL)

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