

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD**

E/MISC/70337/2018

&

E/71109/2018-EX[DB]

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1919-17-18 dated 26.03.2018 passed by Commissioner(Appeals), Central Goods & Service Tax, Noida.)

Commissioner of Customs, Central Excise & Service Tax, Noida
...APPELLANT(S)

VERSUS

M/s.Schneider Electric Infrastructure Ltd.

RESPONDENT (S)

APPEARANCE

Shri Sandeep Kr. Singh (Dy.Commr.) (A.R.) for the Revenue
NONE for the Respondent

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 10.12.2018

FINAL ORDER NO.72816/2018

Per Mrs.Archana Wadhwa :

The present application stands filed by the Revenue for staying the operation of Commissioner(Appeals)'s order vide which he has granted relief to the respondent. Finding that the said order is non-executable, we find no merits in the Revenue's stay petition. The same is accordingly rejected.

2. We further note that a short issue is involved in the present appeal and as such we proceed to decide the same, after hearing the learned A.R. and after going through the impugned order.

3. As per the facts on record, the respondents executed a bond for export of goods under Rule 19 of the Central Excise Rules, 2002 read with Notification No.42/2001-CE(NT) dated 26.06.2001. For the said purpose they were also issued a CT-1 Certificate by the proper officer.

4. Subsequently however, it was found that inasmuch as the goods were exported to Bhutan, which is not covered by Notification No.42/2001, a demand letter was issued to the respondents for recovery of duty and penal provision. The original adjudicating authority confirmed the demand to the extent of Rs.25,06,423/- on the ground of illegal and unauthorized procurement of CT-1 Certificate. Penalties were imposed upon him.

5. On appeal Commissioner(Appeals) set aside the said order of the original adjudicating authority by observing that the exports made without payment of duty to Bhutan were covered by Notification No.45/2001-CE(NT) dated 06.06.2001. In terms of the said Notification there is no requirement of CT-1 Certificate since a merchant exporter was nowhere barred from following the provisions of Notification No.45/2001. The recovery procedure as prescribed under NotificationNo.42/2001 cannot be invoked since the goods were neither diverted for consumption in India nor exported under Notification No.42/2001-CE(NT). The goods were actually exported and there was no revenue loss. The CT-1 Certificate was not required and as soon as the assessee came to know about this, they informed the department where the jurisdictional officer tried to correct the mistake of issuance of CT-1 by issuance of a corrigendum dated 10.09.2012. The whole

matter was based on a minor procedural lapse that has no revenue implications and as per the settled law, the substantial benefits cannot be denied on minor procedural lapses. For arriving at the above proposition, he relied upon various decisions including the Hon'ble Supreme Court's judgment in the case of Mangalore Chemicals and Fertilisers v. Deputy Commissioner [1991 (55) E.L.T. 437 (S.C.)] as also in the case of Uday Shankar Triyar v. Ram Kaleswar Prasad Singh & Another [2005 (AIR) SCW 5851]. Reference was also made to Tribunal's decisions.

6. Revenue is not disputing the applicability and availability of Notification No.45/2001. The only objection is that the appellant having applied for CT-1 Certificate in terms of Notification No.42/2001, which was not available to them, the benefit has to be denied.

7. We find no merits in the above stand of the Revenue. Admittedly Notification No.45 was available to the assessee and the mere fact that they initially applied under Notification No.42, cannot be adopted as a ground for denial of benefit of Notification No.45. As such we find no merits in the Revenue's stand. Their appeal is accordingly rejected. Miscellaneous Application also gets disposed of.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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