FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 31/07/2017

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70717-70718/2017-SM[BR] dated 27/03/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/269/2009	C.C.E, LUCKNOW 7-A, Ashok Marg, Lucknow.
2	E/270/2009	C.C.E, LUCKNOW 7-A, Ashok Marg, Lucknow.
		Name and Address of Respondent
3		PNC CONSTRUCTION CO. LTD. D-51, KAMLA NAGAR, AGRA (NOW KNOWN AS M/S PNC INFRATECH LTD.),,
4		NCC-PNC (JV), D-51, KAMLA NAGAR, AGRA.,,

Other Appellants and Respondents as per Annexure

Copy To

5 Bar Association, CESTAT, Allahabad

6 Director Publications, Customs, Excise. I.P. Estate, Delhi

7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/269 & 270/2009-EX[SM]

(Arising out of Order-in-Appeal No. 130-133-CE/2008 dated 31/10/2008 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

Commissioner of Central Excise, Lucknow **Appellant**

Vs.

M/s PNC Construction Co. Ltd. (In Appeal No. E/269/2009) &

NCC-PNC (JV), (In Appeal No. E/270/2009) **Respondent**

Appearance:

Shri D. K. Deb, Assistant Commissioner (AR), for Appellant
None for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 27/03/2017

FINAL ORDER NO. 70717 - 70718/2017

Per: Anil Choudhary

The Revenue is in appeal challenging the order passed by the Commissioner (Appeals) by which refund claim is allowed to the respondents under the Provisions of Notification No. 108/95-CE(NT) dated 28/08/1995.

2. The grievance of Revenue is that the seller of HSD i.e. Indian Oil has not made sales to the United Nations project, therefore respondents should not be allowed to avail the benefit of Notification No. 108/95-CE(NT) dated 28/08/1995, when they claim that they have supplied the HSD for the

United Nations project.

3. The ld. D. R. relies on the grounds of appeal and states that the respondents are buying HSD from M/s Indian Oil Corporation Ltd. (hereinafter referred as 'IOCL' for short), and IOCL have not at all made supply to United Nations project. Accordingly, the respondent is not entitled to the refund claim, which has been erroneously granted to the buyer by the Commissioner (Appeals). It is further urged by ld. D. R. that the additional duty of Excise under the Finance Act is not exempted by Notification No. 108/95-CE(NT) dated 28/08/1995 as amended. Further as regards unjust enrichment, it is urged that mere production of an affidavit along with certificate from the Chartered Accountant for not passing the burden does not absolve the respondents of the legal requirement to prove that the burden of duty has not been passed on. The Adjudicating Authority has mentioned in the OIO that the parties have failed to produce their balance-sheets to testify the correctness or otherwise of the aforesaid affidavit or Chartered Accountant Certificate. Thus, the respondent is required to satisfy the bar of unjust enrichment.

4. The respondents are absent, in spite of notice.

5. Having considered the rival contentions and on perusal of the facts on record, I find that the case of the respondents is that even though IOCL is not entitled for the refund claim, the ultimate user (respondents) have been using it for United

Nations project and as such, were not debarred to take benefit under Notification No. 108/95-CE(NT) dated 28/08/1995. The respondent - PNC Construction Co. Ltd., was allotted a contract work under "Major Maintenance Works, under Uttar Pradesh State Roads Project for Package No.UPSRP/RMC/42" from Shikohabad to Etah and that contract was awarded to them under the World Bank Projects (Roads) Letter No. 8156/19PD/SRP-II dated 09/09/2005 and approved by the Government of India for implementation by U.P. Public Works Department, Government of Uttar Pradesh through the Chief Engineer, World Bank Projects (Roads) UPPWD, Lucknow. The respondent - M/s PNC Construction Co. Ltd. submitted self attested photocopy of Project Authority Certificate No. CEWBPWD/SRP/RMC-42/1301 dated 20/01/2006 for 1250 KL HSD issued by Chief Engineer (WB Project) UPPWD, Lucknow countersigned by Principal Secretary/Secretary (PWD) U. P. Government. Accordingly, the respondents claimed that they are entitled for the benefit of Notification No. 108/95-CE(NT) dated 28/08/1995 as amended on purchases of HSD on payment of Central Excise duty thereon from IOCL, Mathura. The respondent has submitted all the relevant documents in support of the claim for exemption.

6. Similarly, respondent – M/s NCC-PNC (JV), was allotted a contract of work for the work construction of Roads & Bridges for Phase–I, Package-I up-gradation of Sagar–Bina

Road 71.80 Km. under Madhya Pradesh State Road Sector Development Programme and that contract was awarded to them under the Asian Development Bank Loan No. 1959 IND, duly approved by Government of India for implementation by MP Public Works Department, Government of Madhya Pradesh through the M.P. Road Development Corporation Ltd. The respondent had submitted all relevant documents like self attested photocopies of the Project Authority Certificate, Evidence of Purchase, mode of payment of Excise duty, etc.

7. It is the contention of the respondents that even though IOCL is not entitled for the refund claim, the ultimate user have been using it for United Nations Project or World Bank Project and was not debarred to take benefit under Notification No. 108/95-CE(NT) dated 28/08/1995 as amended. Further, reliance was placed on the ruling of Hon'ble High Court of Bombay in the case of Jai Bhagwati Impex Pvt. Ltd. *Versus* union of India reported at 2009 (13) S.T.R. 24 (Bombay) and of this Tribunal in the case of Commissioner of Central Excise, Pune, *Versus* Spentex Industries Ltd. reported at 2007 (218) E.L.T. 371 (Tri. – Mumbai).

8. The ld. Commissioner (Appeals) have observed that the respondents have fulfilled all the conditions under Notification No. 108/95-CE(NT) dated 28/08/1995 as amended. Further, on scrutiny of the records, revealed that the Project Authority Certificate issued by the concerned

State Authorities was submitted by IOCL, Mathura in original, in the office of the Adjudicating Authority. Further, as regards the unjust enrichment, the ld. Commissioner (Appeals) have observed that the respondents have submitted affidavit from the Managing Director, as well as certificate from the Chartered Accountant to the effect that the incidence of duty paid by them have not been passed on to any other person. Further, the respondents have shown the amount of outstanding as refund claim receivable from Excise Department in their balance-sheets. Further, no contrary evidence has been brought on record by the Revenue. Accordingly, it has been held that the bar of unjust enrichment is not attracted in the facts of the present case.

9. Further, as regards the availability of refund claim of additional Excise duty paid on the HSD, the ld. Commissioner (Appeals) have observed that as per Notification No. 108/95-CE(NT) dated 28/08/1995, in the list of duty exempted the additional Excise duty leviable thereon under Sub-section 1 of section 3 of Additional duty of Excise (GSI) Act, 1957 and Additional duty on HSD imposed vide Section 133 of the Finance Act, 1999 read with the second schedule to the Finance Act, 1999 are also exempted. Further Section 133 of the Finance Act, 1999 reads as follows:-

"(3). The provisions of the Central Excise Act, 1944 and the Rules made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the additional duty of Excise leviable under the said Section 133 of the Finance Act, 1999, in respect of any goods as they apply in relation to the levy and collection of the duties of Excise on such goods, under that Act or the Rules, as the case may be.

10. Thus, in case of exemption under Notification No. 108/95, no distinction has been made for additional Excise duty on HSD in terms of Section 133 of the Finance Act, 1999.

11. Accordingly, I hold that the respondents are entitled to the benefit of refund (including on Additional Excise duty) under Notification No. 108/95 as amended. I, further, direct the Adjudicating Authority to grant the refund within a period of 45 days from the date of receipt of a copy of this order along with interest as per rules.

(Dictated and pronounced in Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ansari