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: 29/11/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71068/2016-SM[BR] dated 04/11/2016

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/2793/2007	CONCRETE UDYOG LTD (EARLIER CONCRETE UDYOG) INDUSTRIAL AREA, BIJOLIM JHANSI.
		Name and Address of Respondent
2		-C.C.E. KANPUR 117/7, SARVODAYA NAGAR, KANPUR 208005.

Copy To

3 Advocate(s) / Consultant(s):

BIPIN GARG
B-1/1289, A - VASANT KUNJ,
NEW DELHI

4 Bar Association, CESTAT, Allahabad

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

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

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

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

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

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

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
12 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082
13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar

5/12/16

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

Appeal No.E/2793/2007-EX[SM]

Arising out of Order-in-Appeal No.250/APPL/KNP/2007 dated 24.07.2007 passed by Commissioner (Appeals) Customs, Central Excise, Kanpur.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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M/s Concrete Udyog Ltd.

...APPELLANT(S)

VERSUS

Commissioner of Central Excise, Kanpur

...RESPONDENT (S)

APPEARANCE

Shri Mayank Garg, Advocate for the Appellant (s)
Shri R.K. Mishra, Supdt. (A.R.) for the Department (s)

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT: 04.11.2016

FINAL ORDER NO.- 71068/2016

Per Mr. Anil Choudhary :

The issue in this appeal by the appellant, a manufacturer of RCC Pipes etc., is whether they have complied with the conditions to avail exemption from Central Excise duty as per provisions of Notification No.108/95 dated 28.08.1996, as amended.

2. The brief facts are that the appellant is a registered manufacturer under the Central Excise provisions, manufacturing PCC poles, Beams and Pipes. The appellant intimated the Department vide their letter dated 29.03.2005 that they would be clearing their excisable goods namely PCC Pipes/RCC Pipes at Nil rate of duty under the provisions of Notification No.108/95 (as amended) to M/s NCC-PNC (Joint Venture). In support, the appellant also submitted a certificate dated 18.03.2005 issued by the Managing Director, M.P. Road Development Corporation Ltd. Bhopal and countersigned by Principal Secretary (PWD) Government of M.P., without having any seal of the authority. The certificate certified that the goods namely PCC Pipes were intended to be used for rehabilitation and upgradation of Sagar- Bina Road under Asian Development Bank Loan. It is also certified in the said certificate that the Government of India had approved the above project for implementation by Public Works Department, Government of M.P., through M.P. road Development Corporation Ltd.

3. The SCN dated 13.03.2006 was issued as it appeared to Revenue that the first and foremost condition to avail exemption is that goods are supplied to the projects financed by United Nations or an International Organization and approved by Government of India.

The appellant did not submit any documentary evidence issued, by the Government of India, regarding the fact that the project for which, the excisable goods were supplied was approved by the Government of India. Further, on scrutiny of the quarterly ~~year of~~ E.R.1's returns, it was observed by Revenue that appellant have cleared goods worth of Rs.23,60,513/- at nil rate of duty under Notification No.108/95, without fulfilling the requirements of the said notification, and accordingly, it was proposed to demand duty amounting to Rs.3,77,682/- with interest and ~~it is~~ with further proposal to levy penalty. The SCN was adjudicated vide O-I-O dated 09.03.2007 by the Assistant Commissioner on contest and the proposed demand was confirmed along with equal amount of penalty under Section 11 AC of the Act. Being aggrieved, the appellant preferred appeal before ~~loaded~~ Ld. Commissioner appeals who ~~would've~~ vide the impugned order ~~is~~ have been pleased to reject the appeal, observing that appellant failed to submit any evidence to support their claim that the project was duly approved by government of India which was basic and foremost condition to claim exemption.

4. Being aggrieved the appellant is before this tribunal the learned counsel for the appellant have taken me through the notification, wherein it is provided in Para (c)(ii) as follows: -

"if the said project has been approved by the Government of India for implementation by the Government of a State or a Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by the Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or the Union Territory, that the said goods are required for the execution of the said project, and that the said project has duly been approved by the Government of India for implementation by the concerned State Government". In case the goods are intended to be supplied to project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank and/or an International Organization other than those listed in Annexure and if the said project has been approved by the Government of India for implementation by the Government of a State or Union Territory, a certificate from the Executive Head of the project implementing Authority and countersigned by the Principal Secretary or the Secretary Finance, as the case may be, in the concerned State Government or the Union Territory, that the said goods are required for the execution of the said project, and that the said project has been duly approved by the Government of India for implementation by the concerned State Government.

5. The learned counsel urges that from a perusal of the certificate on record dated 18.03.2005 No.ADB/Phase-1/114/EX_Cus/2004/1947 fulfils all the requirements namely, (i) this certificate is issued by the Project implementing Authority, that is, by the Managing Director of M.P. Road Development Corporation, (ii) it certifies that the project is under Loan of Asian Development Bank, (iii) Government of India has approved the project for implementation by Public Works Development, Government of M.P. through M.P. Road Development Corporation Ltd. The certificate also mentions the quantum of goods required, the name of supplier i.e. appellant, and the authorized purchaser or the contractor of the Implementing Agency namely

NCC-PNC (Joint Venture).

6. Thus, all the conditions of the said notification are fulfilled for exemption. Accordingly, he prays for setting aside the impugned order and allowing the appeal with consequential benefits.

7. The learned AR for Revenue relies on the impugned order. He further states that the appellant has to fulfill not only condition number (ii) in Clause-c but also condition number (i) which is as follows:- if the said project has been approved by the Government of India, a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned Line Ministry in the Government of India, that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India. Condition No.C (I) provides that the assessee has to produce evidence – a certificate certified from the Project Implementing Authority and countersigned by an officer not below rank of a Joint Secretary of the Government of India in the concerned Line Ministry in the Government of India. As this is not fulfilled that is no certificate produced from the government of India, the exemption is rightly disallowed.

8. Having considered rival contentions, I find that condition No.C (i) deals with ~~whether~~ where the project is implemented by the Central Government itself and condition No.C(ii) deals with the situation where the project is approved by Government of India for implementation by Government of a State/Union Territory.

Accordingly, I hold that only either of the condition C(i) or C(ii) is applicable. Admittedly, in the facts of this case, the project is approved by Government of India to be implemented by the State of Madhya Pradesh through its Public Works Department and the Implementing Authorities, M.P. Road Corporation Ltd. Thus, I hold that the appellant fulfils the conditions of the said notification and the exemption is allowable to them under the facts and circumstances under Notification No.108/95-CE. Accordingly, the appeal is allowed with consequential benefits. The impugned order is set aside.

(Dictated and Pronounced in the open Court)

(Anil Choudhary)
Member (Judicial)

Mishra

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