CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
OLD RED BUILDING, 38,M.G.Marg,CIVIL LINES, ALLAHABAD

Dated: 27/1/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/ 70047/2016 dated 21/1/2016

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
	E/2977/2006	JYOTI CAPSULES 123/37, SARASH BAGH FACTORY AREA, FAZALGANJ KANPUR(UP)208012
	Name and Address of Respondent	CCE, KANPUR 117/7, SARVODAYA NAGAR UP)

Other Appellants and Respondents as per Annexure

Copy To

3Advocate(s) / Consultant(s SH SADHU RAM,CONST
H.NO 340, SECTOR NO 14
FARIDABAD-121009(HAR)

4 Bar Association, CESTAT, ALLAHABAD

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

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhisham 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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
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,Panjagutta Hyderabad.-500082
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar
Regional Bench, Allahabad

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

Ex. Appeal No.2977/06

Arising out of O/A No.208-CE/APPL/KNP/06 dated 25.05.2006 passed by Commr. (Appeals) of Customs & Central Excise, Kanpur

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

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 Jyoti Capsules

...APPELLANT(S)

VERSUS

CCEx, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Sadhu Ram, Consultant for the Appellant (s)
Shri Rajeev Ranjan, Joint Commr. (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. H. K. THAKUR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 21.01.2016

Final ORDER NO. 70047/2016

सीमा शुल्क उत्पाद एवं सेवा कर अपीलीय अधिकरण CUSTOMS EXCISE & SERVICES TAX APPELLATE TRIBUNAL

Per Mr. Anil Choudhary :

Heard the parties.

2. The issue involved in this appeal is whether the clearance made duty free for supply made to a project financed by the International Development Association, is eligible to exemption under Notification 108/95-CE.

3. It is seen that the issue is no longer res-*integra* . In the appellant's own case for the previous period, the issue has been decided in favour of the assessee by this Tribunal vide Final Order No.1241/2009-EX (PB) dated 28.10.2009 in Appeal No.314/2006 reported as 2010 (261) ELT 469 (Tri.-Del.). The relevant paragraphs of the said order are reproduced below :

> "**3.** The relevant facts in brief are that the respondents manufacture medicine falling under chapter 30 and in particular they manufacture Chloramphenicol eye ointment I.P. They supplied the Chloramphenicol eye ointment I.P. to M/s. Hindustan Latex Ltd. who in turn supplied the same, in pursuance of International Competitive Bidding, to a project funded by International Development Association (IDA). The goods have been cleared without payment of duty availing the benefit of Notification No. 108/95-C.E., dated 28-8-1995. Show cause notice was issued alleging that IDA was not an organisation listed under Notification No. 108/95-C.E. for the purpose of extending exemption. It was also alleged that the project was not financed by any international organisation approved for the said purpose. The original authority, accordingly, confirmed the demand of duty of Rs. 8,56,057/- along with interest and imposed equal amount of penalty. On appeal filed by the appellant, the Commissioner (Appeals) held that IDA was part of World Bank and that the basis for demand

of duty, as held by the original authority, was not sustainable and accordingly allowed the appeal. Hence, the Department is in appeal.

6. We have carefully considered the submissions from both sides. The Notification No. 108/95-C.E. reads as follows :-

"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) (herein after referred to as the said goods) when supplied to the United Nations or an International Organization for their official use or supplied to the projects financed by the said United Nations or an International Organization and approved by the Government of India from the whole of :-

(i) the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944 (1 of 1944) and

(ii) the addition duty of excise leviable thereon under sub-section (1) of Section 3 of the Additional Duties of Excise (Goods of Special Importance), 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) in the case said goods are intended for the official use by the United Nations or an International Organization that the said goods are intended for such use;

(b) In case the said goods are

(i) supplied to an international organization listed in the annexure appended to this notification for use in a project that has been approved by the Government of India and financed (whether by a loan or a grant) by such an organization, a certificate from such an organization 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; or

(ii) supplied to a project that has been approved by the Government of India and financed (whether by a loan or a grant) by International organization listed in the said annexure, a certificate from an officer not below the rank of Deputy Secretary to the Government of India, in the ministry of Finance (Department of Economic Affairs) that the said goods are required for the execution of the said project and the said project has duly been approved by the Government of India.

(c) In case the said goods are intended to be supplied to project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank or any international organization other those listed in the annexure, and

(i) 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 Joint Secretary to the Government of India, that the said goods are required for the execution of the said project and the said project has duly been approved by the Government of India, and

(ii) If the said project has been approved by the Government of India for implementation by the Government of State or a Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or Union Territory, that the said goods are required for the execution of said project and the said project has duly been approved for implementation by the Government of State.

Explanation, - For the purpose of this notification, -

(a) "International organization" means an international organization to which the Central Government has declared in pursuance of section 3 of United Nations (Privileges and Immunities) Act, 1947 that the provisions of the Schedule to the said Act shall apply;

(b) "Line Ministry" means a Ministry in the Government of India, which has so been nominated with respect to a project, by the Government of India, in the Ministry of Finance (Department of Economic Affairs).

ANNEXURE

1. United Nations development Programme,
2. United Nations International Children's Fund
3. Food and Agricultural Organization
4. International Labour Organization,
5. World Health Organization
6. United Nations Population Fund
7. United Nations World Food Programme
8. United Nations Industrial Development Organization"

7. We find that supplies made to different organizations for their use and supplies to projects funded by the different organizations have been granted exemption by the above mentioned notification. Clauses (a), (b) and (c) of proviso to Notification clearly envisages exemption to different categories of the goods. For extending the concession, different certifying procedures have been prescribed for supplies made to different categories of organizations/ or the projects funded by the organizations. Clause (b) of proviso to Notification only relates to exemption to the goods supplied to projects funded by organizations listed in the Annexure to the Notification. Clause (c) of proviso to Notification clearly envisages exemption to the goods which are intended to be supplied to a project financed by the World Bank. The materials placed before us indicate that the World Bank functions in two parts/wings as IDA and IBRD. IDA has been designated as wing in-charge of activity in poor countries of the world. We are in agreement with the submission made by the learned Advocate that International Development Association (IDA) is part and parcel of the World Bank. Therefore, supplies made to IDA ought to be treated as supplies made to World Bank and eligible for the concession envisaged under clause (c) of the proviso to the Notification. Non-mention of IDA in the United Nations (Privileges and Immunities) Act, 1947 does not affect the status of the IDA as part of World Bank. Non-listing of IDA in the United Nations (Privileges and Immunities) Act, 1947 has no relevance to the grant of exemption under the impugned notification as supplies made to World Bank clearly are covered by the notification. We also find that in respect of supplies made to project funded by IDA, the Tribunal in the case of *IBM India Pvt. Ltd.* v. *CCE, Pondicherry* and in the case of *Nestor Pharmaceuticals Ltd.* v. *CCE, Delhi* cited (supra) has upheld the grant of exemption under the impugned Notification. In view of the above, we do not find any merit in the appeal and we do not find any reason to interfere with the order of the Commissioner (Appeals).

8. The appeal filed by the Department is, therefore, rejected and cross objection is also disposed of."

4. Agreeing with the aforementioned pronouncement in the appellant's own case by a Co-ordinate Bench of this Tribunal, we allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefit, if any, in accordance with law.

(Pronounced in the open Court)

Sd/-

(H.K.THAKUR)
MEMBER (TECHNICAL)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy
17.2.16
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001