

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

S.No.	Appeal No.	Appellant	Respondent	Impugned order arising out of OIA passed by CC (Appeals), Chennai
1.	C/52/2006	Lahari Impex Pvt. Ltd.	Commissioner of Customs, Chennai	Order-in-Appeal No.C.Cus.No.842/2005 dated 30.11.2005
2.	C/225/2006	Indo Tech Transformers Ltd.	-do-	Order-in-Appeal No.C.Cus.No.446/2006 dated 07.06.2006
3.	C/331/2006	Cylinder Liners Agencies (P) Ltd.	-do-	Order-in-Appeal No.C.Cus.No.443/2006 dated 06.06.2006
4.	C/60/2007	Madras Engineering Industries (P) Ltd.	-do-	Order-in-Appeal No.C.Cus.No.805/2006 dated 03.11.2006

Appearance:

Shri Vijaya Baskaran, Advocate (Sl.No.1)
Shri J. Shankarraman, Advocate (Sl.No.2)
None appeared for Sl.No.3
Shri S. Murugappan, Advocate (Sl.No.4)
For the Appellant

Shri A. Cletus, ADC (AR)
Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing : 24.07.2017
Date of Pronouncement: 31-08-2017

FINAL ORDER No. 41874-41877/2017



Per Bench

As the issues involved in all these four appeals being common, they were heard together for common disposal.

2. In appeal No.C/52/2006 filed by M/s.Lahari Impex Pvt. Ltd., the appellant exported High Speed Tool Planks vide shipping bills dt. 28.04.1997 and 30.06.1997 to Germany under DEEC scheme. They re-imported the goods vide Bill of Entry No.58297 dt. 13.10.98 for reprocessing/reconditioning, claiming Notification No.158/95-Cus. As the subject goods could not be re-exported within the period of six months prescribed in the said notification, they sought extension for re-export, which was permitted by the concerned Deputy Commissioner of Customs upto 21.06.2000. Subsequently, the appellant re-exported the goods after conducting necessary repairs but beyond the period prescribed in the notification. A SCN dt. 2.3.2000 was therefore issued to the importer, inter alia proposing duty demand of Rs.32,78,560/-. In adjudication, original authority vide an order dt. 11.09.2001 confirmed the proposed demand with interest. In appeal, before Commissioner (Appeals), appellant sought for benefit of another Customs Notification No.94/96-Cus. The Commissioner (Appeals), while upholding lower authority's order with regard to denial of benefit of Notification No.158/95-Cus., however



permitted the appellant to approach lower authority with a claim for benefit of Notification No.94/96 on merits. In de novo consideration, lower authority vide order dt. 28.03.2005 denied the benefit of said Customs Notification No.94/96-Cus. and confirmed the duty demand of Rs.32,78,560/- with interest. On appeal, Commissioner (Appeals) vide the impugned order dt. 30.11.2005 upheld the order of lower authority. Hence Appeal No.C/52/2006.

3. In Appeal C/225/2006, filed by Indo Tech Transformers Ltd. the appellant filed Bill of Entry No.585294 dt. 04.02.2004 for re-import of 20 MVA copper wound transformers and claimed exemption under Notification No.158/95-Cus. Appellant however re-exported the goods only vide Shipping Bill No.2156092 dt. 16.09.2005. In proceedings initiated against the appellant, original authority held that impugned goods had been re-exported beyond the maximum allowed period of one year and confirmed differential duty liability of Rs.26,89,817/-. On appeal, Commissioner (Appeals) vide impugned order dt. 07.06.2006 upheld the order of original authority. Hence Appeal No.C/225/2006.

4. In Appeal C/331/2006, Cylinder Liners Agencies (P) Ltd., the appellant had re-imported two consignments of rejected liner castings vide Bills of Entry dt. 04.08.2003 which earlier had been exported by them under DEPB scheme. Goods were cleared without payment of



customs duty under Notification No.158/95-Cus. Extension of time was permitted upto 29.08.2004 by competent authority to re-export the goods. As the appellant did not re-export the goods even after completion of extended period, proceedings were initiated against the appellant. In adjudication proceedings before the original authority, appellant represented that they had already re-exported 1260 nos. of liner castings out of 3036 nos. of castings re-imported; and that they should be extended with benefit under Notification No.94/96-Cus. instead of Notification No.158/95-Cus. Original authority after culmination of adjudication proceedings, reduced the confirmed total duty demand to Rs.17,39,766/-. On appeal, Commissioner (Appeals) vide impugned order dt. 06.06.2006, rejected the appellant's claim for consideration of Notification No.94/96, however, matter was remanded with the limited objective of confirming the exact amount of duty liability after reducing the amount corresponding to the goods re-exported correctly in terms of Notification No.158/95-Cus. Hence Appeal No.C/331/2006.

5. In Appeal C/60/2007, Madras Engineering Industries (P) Ltd., the appellant, had re-imported automatic slack adjustors, returned by buyers for rectification, claiming benefit of Notification No.158/95-Cus. As they could not re-export the goods within the stipulated time, department issued a demand of Rs.16,60,218/-, however appellants



requested for reassessment of Bills of Entry under Customs Notification 94/96-Cus. instead of 158/95-Cus. and also sought reassessment of the notional freight paid by them and to change it with actual freight figures. Original authority held that change of notification cannot be permitted and also rejected the request for reassessment. Duty of Rs.14,10,320/- was confirmed by original authority. On appeal, Commissioner (Appeals) vide impugned order dt.03.11.2006, upheld the order of original authority. Hence Appeal No.C/60/2007.

6. None appeared for appellant Cylinder Liners Agencies (P) Ltd. in Appeal C/231/2006. The Id. advocates appearing for other appeals having made arguments more or less on the same lines, they are broadly summarized as under :

- i) Duty cannot be levied and collected on goods which have been ultimately re-exported and are no longer part of the Indian landmass. Therefore, even though the appellant has not complied with the conditions of notification no.158/95-Cus dated 14.11.95, as the goods have been ultimately re-exported, there is no provision in the Customs act, 1962 to levy and collect duty.
- ii) Appellant is entitled to claim the benefit of notification no.94/96-Cus dated 16.12.1996. The Commissioner (Appeals), in the impugned order, rejects the benefit of the said notification for non-



compliance of two conditions namely, the act of not de-logging the entry in the DEEC book and the act of re-import of goods beyond one year from the date of original export and consequently, for not seeking extension of this time limit from the jurisdictional Commissioner. It is submitted that the act of not de-logging the original export made in the DEEC book is a procedural condition, the non-compliance of which cannot be fatal to the claim of the benefit of notification no.94/96-Cus dated 16.12.1996. Even if the original export was de-logged, the appellant would have been entitled to re-enter the export ultimately made in the DEEC book. It is submitted that the Department has erred in construing this condition as mandatory.

iii) Hon'ble Supreme Court in the case of *Mangalore Chemicals and Fertilizers Ltd. Vs. Deputy Commissioner* reported in 1991 (55) E.L.T. 437 (S.C.) has held that non-observance of a procedural condition is condonable and should not be a ground to reject a substantive benefit.

iv) Impugned demand is liable to be set aside on the ground of revenue neutrality as the goods in question have been re-exported and even if the appellant pays the duty demanded, he is entitled to claim duty drawback in terms of the provisions of Section 74 of the Customs Act, 1962. The Hon'ble Supreme Court in a plethora of



cases has set aside the demand of duty on the ground of revenue neutrality.

v) Hon'ble Supreme Court decision in the case of *Share Medical Care Vs. Union of India* reported in 2007 (209) E.L.T. 321 (S.C.), it was held that "*Even if an applicant does not claim benefit under a particular notification at initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage*".

vi) In terms of demand notice issued under the provisions of Customs Act, the department sought to deny the benefit under Notification No.158/1995 and as such, the assessment is being reviewed by denying the exemption. Once that is done, the matter gets re-opened and proper quantification of duty has to be again made. Therefore, the point for determination in the case of *Priya Blue Industries* before the Apex Court was totally different and in the present case, this is a different situation and not covered by the decision of the Supreme Court in the above case.

7. On the other hand, on behalf of Revenue, Id. A.Rs Shri A.Cletus, ADC and Shri B. Balamurugan support the impugned orders. They also made oral submissions which can be broadly summarized as follows :

(i) Goods have been imported claiming only Notification No.158/95-Cus. Although appellant have now claimed alternate

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Notification No.94/96-Cus, that is applicable when originally exported Indian goods are returned/rejected by foreign buyers, subject to a vital that DEEC book should not have been closed and accordingly on re-exportation, the re-imports shall have to be delogged from the DEEC book. However, in these cases, DEEC book had already been closed and hence it was no longer possible to delog the DEEC book.

(ii) When appellants have voluntarily opted for following a special procedure extended under Notification No.158/95-Cus. which is specially framed for facilitating such re-imports, they are duty bound to strictly follow the procedure/condition prescribed therein.

(iii) The provisions and qualifications for availing Notification No.94/96-Cus. are different from that of Notification 158/95-Cus. for example, as per proviso (a) to Notification No.94/96, exports under DEEC scheme would have to be re-imported within a maximum period of two years, inclusive of extended period.

(iv) Even in respect of goods exported under DEPB and re-imported, such cases were brought into Notification No.94/96-Cus. only vide amending Notification No.135/99 dt. 27.12.2009 by incorporation of Entry 2A thereto. Thus, in case of such re-imports, the conditions of 2A will require to be fulfilled.

(v) Request for reassessment is not maintainable when the importer has not challenged the order of assessment. When order of



assessment was correct and had been done extending benefit of Notification No.158/95-Cus. as claimed by the appellant, there would be no ground to reopen the same subsequently for reassessment as requested by appellant.

8. Heard both sides and have gone through the facts.

9. The core issues that arise for decision in all these appeals can be capsule as follows :

- (i) Whether differential duty can be levied on goods re-imported with full duty exemption under Notification No.158/95-Cus. when the repaired/reconditioned goods have been exported only after expiry of the period prescribed in that notification ?
- (ii) Whether the demands made on this score in these appeals can be set aside even on the grounds of revenue-neutrality ?
- (iii) Alternatively, in such cases, whether the appellants can claim the benefit of another notification No.94/96-Cus or otherwise ?

10. To understand the contentious issues in perspective, the relevant portions of the Notification No.158/95-Cus are reproduced as below :



TABLE

Serial number	Description of goods	Conditions
(1)	(2)	(3)
1.	Goods manufactured in India and parts of such goods whether of Indian or foreign manufacture and reimported into India for repairs or for reconditioning	1. Such reimportation takes place within 3 years from the date of exportation; 2. Goods are re-exported within six months of the date of reimportation or such extended period not exceeding a further period of six months as the Commissioner of Customs may allow; 3. The Assistant Commissioner of Customs is satisfied as regards identity of the goods; 4. The importers at the time of importation executes a bond undertaking to-(a) export the goods after repairs or reconditioning within the period as stipulated; (b) pay, on demand, in the event of his failure to comply with any of the aforesaid conditions, an amount equal to the difference between the duty levied at the time of reimport and the duty leviable on such goods at the time of importation but for the exemption contained herein.

From the above, what emerges is that to be eligible for the benefit under Notification No.158/95, the importation should take place within three years from the date of original exportation, goods are re-exported within a maximum of twelve months from the date of re-importation and when such re-exportation is not effected as per the conditions of the notification, the differential duty liability on account



of availment of Notification No.158/95-Cus. at re-importation is liable to paid up by the importer.

11. The common thread in all these appeals is that, for some reason or the other, the appellants therein were not able to effect the re-export after repair/reconditionings within the prescribed period allowed in the notification, i.e. maximum of 12 months including the extended period. It appears that the duty forgone at the time of re-import of the goods will then have to be paid up by the importer. There seems to be broad agreement on this score, though appellant in C/52/2006 (Lahari Impex) has contended that as the goods have been eventually re-exported, the impugned demand is liable to be set aside on the ground of revenue-neutrality since even if duty demanded is paid up since the appellant is otherwise entitled to claim duty drawback. Be that as it may be, we find that the conditionalities of Notification No.158/95-Cus. are very much straightforward and require the duty forgone to be paid up in case of default. In our opinion, Notification No.158/95-Cus. is a special purpose vehicle for the benefit of exporters, whose goods are rejected/sent back by foreign buyers and require repairs/reconditioning, to facilitate the said re-import without the added cost on payment of import duty thereon, as would have been applicable in the case of similar imported goods. Surely, this is a facilitation for exporters to carry out



repairs/reconditionings on the goods returned for that purpose. A close look at the conditionalities of the notification would reveal that the legislature has sought to clip any possibility of misuse. For example, by requiring that such goods are re-imported not beyond the period of three years from the date of their export. So also, to prevent any misuse of facilitating provisions by way of retention of goods in India, the notification also requires that after reconditioning/repair, the re-import goods shall have to be re-exported within a maximum period of 12 months from the date of such re-import. These time limits prescribed both, for re-importation as well as the re-exportation, in our view, are substantive conditionalities and not merely procedural. As held by the Hon'ble Apex Court in *Re: Mangalore Fertilizers & Chemicals Vs Deputy Commissioner* – 1991 (55) ELT 437 (SC), non-observation of a procedural condition of a technical nature is condonable, while that of a substantive condition is not, since it would otherwise facilitate commission of fraud and introduce administrative conveniences. The relevant portion of this judgment of Hon'ble Apex Court is reproduced below makes for illuminating reading :

"11.The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be



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justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

In Kedarnath's case itself this Court pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed :

".....The object of S. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. *Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid.*"

(Emphasis Supplied)

[See: (1965) 3 SCR 626 at 630]"

12. It is also not the case that when being required to pay duty forgone in the event of non-compliance of Notification No.158/95-Cus., the importer is left high and dry with no other remedy. Indeed, such importer, even if he has to discharge differential duty liability, provided he eventually re-exports the re-imported goods at some point, will surely be eligible to claim drawback towards the duties suffered on the goods exported. However, once the substantive post-importation condition of Notification No.158/95-Cus. is not satisfied or



complied with, the importer will have no other option but to pay an amount equal to the difference between duty levied at the time of re-import and the duty leviable on such goods at the time of importation, but for the exemption contained in Notification No.158/95-Cus.

13. Viewed in this light, the issues framed at para 9 (i) and (ii) supra are held in the affirmative.

14. We now come to the issue (iii) framed at para 9 above. In all these appeals, the concerned appellants argued that even if the benefit of Notification No.158/95-Cus. is denied to them, they should be permitted to avail alternative benefit of another Notification No.94/96-Cus. To understand this contention better, it would be appropriate to reproduce the relevant portion of the said Notification No.94/96-Cus as under :

Exemption to re-import of goods exported under duty drawback rebate of duty or under bond. — In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962) and in supersession of the notification of the Government of India in the Ministry of Finance, (Department of Revenue), No.97/95-Customs, dated the 26th May, 1995 the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods falling within any Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and specified in column (2) of the Table hereto annexed (hereinafter referred to as the said Table) when reimported into India, from **so much of the duty of customs** leviable thereon which is specified in the said First Schedule, the **additional duty** leviable thereon under section 3 of the said Customs Tariff Act and **special duty of customs** leviable under sub-section (1) of section 68 of the Finance (No.2) Act, 1996 (33 of 1996), as is in excess of the amount indicated in the corresponding entry in column (3) of the said Table.



TABLE

SI. No.	Description of goods	Amount of duty
(1)	(2)	(3)
1.	Goods exported – (a) under claim for drawback of any customs or excise duties levied by the Union (b) under claim for drawback of any excise duty levied by a State (c) under claim for rebate of Central excise duty (d) under bond without payment of Central excise duty (e) under duty exemption scheme (DEEC) or Export Promotion Capital Goods Scheme (EPCG)	Amount of drawback of customs or excise duties allowed at the time of export Amount of excise duty leviable by State at the time and place of importation of the goods Amount of rebate of Central Excise duty availed at the time of export Amount of Central Excise duty not paid. Amount of excise duty leviable at the time and place of importation of goods and subject to the following conditions applicable for such goods – (I) DEEC book has not been finally closed and export in question is delogged from DEEC book. (II) In case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding reimport have been made. (III) The importer had intimated the details of the consignment re-imported to the ¹ [Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise] in charge of the factory where the goods were manufactured and to the licensing authority regarding the fact of re-importation and produces a dated acknowledgement of such intimation at the time of clearance of goods. (IV) The manufacturer-exporters who are registered with Central Excise Department may be permitted clearance of such goods without payment of Central Excise duty under transit bond to be executed with the customs authorities, such bond will be cancelled on the production of certificate issued by Central Excise authorities about receipt of re-imported goods into their factory.
	Goods, other than those falling under Sl. No.1, exported for repairs abroad	Duty of customs which would be leviable if the value of reimported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.

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| 2A | Goods exported under Duty Entitlement Passbook (DEPB) Scheme. | Amount of Central Excise duty leviable at the time and place of importation of goods plus amount of drawback of Excise duties allowed at the time of exports, subject to the condition that the importer produces a Duty Entitlement Passbook before the proper officer of Customs for debit of an amount equal to the amount of Duty Entitlement Passbook Scheme (DEPB) credit which was permitted by the Government of India in the Ministry of Commerce for the products exported at the time of export of the consignment which is being reimported. |
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3. Goods other than those falling under SI.Nos. 1and 2 Nil

Provided that the Assistant Commissioner of Customs is satisfied that-

- (a) the goods [other than the goods exported under the Duty Exemption Scheme (DEEC) or the Export Promotion Capital Goods Scheme (EPCG) or Duty Entitlement Passbook Scheme (DEPB)] are re-imported within three years after their exportation or within such extended period, not exceeding two years, as the Commissioner of Customs may on sufficient cause being shown for the delay, allow, and in the case of goods exported under the Duty Exemption Scheme (DEEC) or the Export Promotion Capital Goods Scheme (EPCG), or Duty Entitlement Passbook Scheme (DEPB), reimportation of such goods takes place within one year of exportation or such extended period not exceeding one more year as may be allowed by the Commissioner of Customs on sufficient cause being shown,
- (b) the goods are the same which were exported;
- (c) in the case of goods falling under Sr.No.2 of the Table there has been no change in ownership of the goods between the time of export of such goods and re-import thereof:

Provided further nothing contained in this notification shall apply to reimported goods which had been exported -

- (a) by a hundred percent export-oriented undertaking or a unit in a Free Trade Zone as defined under section 3 of the Central Excise Act, 1944 (1 of 1944);
- (b) from a public warehouse or a private warehouse appointed or licensed, as the case may be, under section 57 or section 58 of the Customs Act, 1962 (52 of 1962).

Explanation. - For the purposes of this notification, the goods shall not be deemed to be the same if these are re-imported after being subjected to re-manufacturing or reprocessing through melting, recycling or recasting abroad.



[Notification No.94/96-Cus., dated 16-12-1996 as amended by Notification No.135/99-Cus., dated 27-12-1999.]

15. From a study of Notification No.94/96, the important aspect that emerges is that the notification enables duty exemption at re-importation of the exported goods, from such quantum as specified in Column 3 of the notification. The goods are required to be re-imported within three years after their exportation or within the extended period of further two years. However, in respect of goods exported under DEEC or DEPB re-importation of such goods should take place within one year of exportation or within further extended period of one more year. The identity of the goods are to be established at the time of re-import. In respect of goods exported under claim for drawback, the amount of duty required to be paid at the time of their re-import will be equal to the amount of drawback allowed at the time of export. In respect of goods exported under claim for rebate of Central Excise duty, the importer will, at the time of their re-importation, have to discharge Customs Duty equal to amount of such rebate availed at the time of export. In respect of goods exported under bond without payment of excise duty, re-importation will be allowed on payment of duty equal to the amount of Central Excise duty not paid. In respect of goods exported under DEEC scheme, at the time of re-importation, the DEEC book should not have been finalized/closed and export in question is delogged from

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DEEC book. In respect of goods exported under EPCG scheme, the period of full export performance should not have expired and necessary endorsements regarding re-import are required to be made. In respect of goods exported under DEPB scheme, the duty that has to be discharged at the time of re-import is equal to amount of Central Excise duty leviable at the time and place of importation plus amount of drawback of Excise Duty allowed at the time of exports subject to certain conditions.

16. However, one crucial takeaway from Notification No.94/96-Cus is that it is only an exemption notification to facilitate re-import, however, without any attendant requirement of re-export of the imported goods. In other words, once the duty at the rates given in Column 3 of the Notification is discharged at the time of re-importation, there is no further requirement to re-export the goods. The following fundamental differences stand out in a comparison between Notification No.158/95-Cus. and Notification No.94/96-Cus. :

Notification No.158/95-Cus.	Notification No.94/96-Cus.
➤ This notification has facilitatory provision for enabling re-import of exported goods for repair or reconditioning.	➤ Facilitates re-import of exported goods, however no requirement of their re-export subsequently after repair/reconditioning.
➤ Requires re-importation to be effected within 3 years from the date of exportation without any further extensions.	➤ Goods [other than DEEC/EPCG/DEPB exports] can be re-imported within 3 years of their exportation and



	/ or further extended period of upto 2 years i.e. within 5 years of their exportation. For DEEC/EPCG/DEPB exports, re-importation has to take place within a maximum of two years.
➤ There are no conditions relating to DEEC/EPCG exports in Notification No.158/95-Cus.	➤ In case of DEEC exports at the time of their re-import, DEEC book should not have been finalized/closed and the export in question is then delogged from the DEEC book. So also, in case of EPCG exports, period of full export performance should not have expired at the time of re-export so that necessary endorsements regarding re-import can be made.
➤ Notification 158/95 requires re-exportation of the goods within a maximum period of one year from the date of re-importation. On failure to do so, the importer will have to pay up duty forgone while availing 158/95-Cus.	➤ There is no such requirement in Notification No.94/96

17. Appellants have contended that since they have missed the bus in respect of Notification No.158/95-Cus., they should be nonetheless allowed to claim the beneficial provisions of Notification No.94/96-



Cus. However, in view of the discussions supra regarding Notification No.158/95-Cus. and Notification No.94/96-Cus., we are unable to find much merit in this contention. Both these notifications have been issued for different situations and different reasons. Notification No.94/96 does not require that the re-importation is for the purposes of repair or reconditioning. There is also no requirement in that notification mandating re-export of the goods of the re-imported goods. In other words, Notification No.94/96-Cus. seeks to cover only those situations where the importer does not have any declared intent to immediately re-export the re-imported goods, as long as the duty liability specified in Col.3 of that notification is discharged. The importer can leave the goods undisturbed e.g., in their factory or premises, without any pressing need for their re-export. That however is not the case with Notification No.158/95-Cus which seeks to cover a situation where the goods are re-imported within 3 years, only for repair or reconditioning and proximate re-export thereafter. Precisely for this reason, the importer enjoys full exemption from customs duty at the time of their re-importation. We are therefore not able to fathom how an import governed by conditionalities and requirements and beneficial exemption of one particular notification can be transposed into another notification with desperate conditions.

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18. It is also pertinent to note that under Notification No.94/96-Cus reduced period of two years maximum has been given to re-importation of goods exported under DEEC/EPCG/DEPB schemes with further requirement that DEEC book should not have been delogged and that EPCG performance period should not have been over. In the case concerning DEEC exports before us, even for arguments sake, the benefit of Notification No.94/96-Cus. cannot be availed by the appellant concerned since the DEEC books had already been closed by the department by the time the goods had been re-imported. We further find that the lower authorities herein have correctly placed reliance on the ratio laid down by the Hon'ble Apex Court in the case of *Indian Rayon and Industries – 2008 (229) ELT 3 (SC)*. In that judgment, the Apex Court ruled that having availed the benefit of Notification No.158/95-Cus., the importer has necessarily to comply with the condition of Notification and it is not open for him to contend that conditions in the said notification need not be fulfilled, be it on the ground that benefit under another notification is available to him or otherwise. The Hon'ble Apex Court even held that the other Notification No.94/96-Cus. is not applicable. In that case, the relevant portion of the judgment is reproduced herein below for ready reference :



"11. By Notification No. 158/95-Cus. dated 14th November, 1995, goods manufactured in India and re-imported in India for repairs or for reconditioning are exempted from whole of the duty of customs leviable on them as well as additional duty subject to the condition, *inter alia*, that the goods are re-exported within six months of the date of re-importation or any extended period as may be allowed and a bond is executed at the time of importation to export within the said period and, in the event of failure to do so, pay an amount equal to the difference between the duty levied at the time of re-import and the duty leviable on such goods at the time of importation. The assessee executed a bond with the President of India, complying with the aforesaid condition of notification and undertook to pay, on demand in the event of its failure to comply with any of the conditions of notification, an amount equal to the difference between the duty levied and leviable on such goods. In respect of each of the Bills of Entry, separate bonds were executed indicating Bill of Entry No., description of goods, country of origin, CIF Value, the assessable value and the bond value.

12. The Revenue contends that the assessee could not avail the benefit under Notification No. 94/96-Cus. and that it could not change its option. According to the assessee, the assessee could change its option even at a later stage and it could avail of the benefit under Notification No. 94/96-Cus. which was in force at that time.

13. We do not find any substance in this submission advanced on behalf of the assessee. The only notification which was available to the assessee at the time of import which granted the assessee the right to import duty free goods was Notification No. 158/95-Cus. Having availed of the benefit of notification, the assessee has necessarily to comply with the conditions of the notification. It goes without saying that the assessee cannot approbate and reprobate. In *Tractors and Farm Equipment Ltd. v. Collector of Customs, Madras*, 1997 (91) E.L.T. 254 (S.C.) = 1998 (9) SCC 665, it was pointed out by this Court that once the assessee's case was that what it had imported do not constitute internal combustion piston engines but only certain components, the importer cannot turn around and say that what was imported constitutes piston engines. Of course, there is no estoppel against the law but having sought for and taken the benefit of the notification to import goods without payment of duty, it is not open to the assessee to contend that the conditions in the said notification need not be fulfilled, be it on the ground that the benefit under another notification is available to him or otherwise.

14. In any event, Notification No. 94/96-Cus. is, on its own terms, not applicable to the facts of the present case. The assessee has claimed the benefit under clause 1(e) of Notification No. 94/96-Cus. The description of the goods claimed in Serial No. 1(e) under Notification No. 94/96-Cus., which reads as under :

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Sl. No.	Description of goods	Amount of duty
(1)	(2)	(3)
(1)	Goods exported -	xxxxxx
	(a) xxx	xxxxxx
	(b) xxx	xxxxxx
	(c) xxx	xxxxxx
	(d) xxx	xxxxxx
	(e) under duty exemption scheme (DEEC) or export Promotion Capital Goods Scheme (EPCG)	Amount of excise duty leviable at the time and place of importation of goods and subject to the following conditions Applicable for such Goods (I) DEEC book has not been finally closed and export in question is delogged from DEEC book. (II) In case of EPCG scheme the period of full export performance has not expired and necessary endorsements regarding reimport have been made. (III) The importer had intimated the details of the consignment re-imported to the Assistant Commissioner of Central Excise in charge of the factory where the goods were manufactured and to the licensing authority regarding the fact of re-importation and produces a dated acknowledgement of such intimation at the time of clearance of goods.
		(IV) The Manufacture exporters who are registered with Central Excise Department may be permitted clearance of such goods without payment of Central Excise duty under transit bond to be executed with the customs authorities, such bond will be cancelled on the production of certificate issued by Central Excise authorities about receipt of re-imported goods into their factory.
(2)	xxx	xxx
(3)	xxx	xxx

refers to the goods exported under DEEC or Export Promotion Capital Goods (EPCG) Scheme and not under DEPB Scheme. In the present case, out of the three Bills of Entry covering goods which had to be re-exported, only one of them was for goods earlier exported under DEEC scheme while the other two were under DEPB scheme. The adjudicating authority had, in respect of goods initially imported under DEEC Scheme, given the benefit

of the Notification No. 94/96-Cus, while rejecting the claim in respect of the goods exported under a DEPB Scheme. This is in accordance with the language of Notification No. 94/96-Cus. The difference between DEEC and DEPB Schemes can be seen from the following :

“DEEC Scheme

Under this scheme the importer is issued an Advance Licence to procure the raw material for a manufacturer of the export product. The goods which are cleared under Advance Licence are meant for use in the manufacture of export product or replenishment of the raw materials already used. The clearance is allowed duty free. The details of items allowed for import against a specific export product are published by the Ministry of Commerce in their Input Output Norms which are part of the Exim Policy.

DEPB Scheme

Under this scheme the exporters are issued DEPB scrips which allows them the specific amount to be utilized for payment of Customs duty. The amount for which DEPB scrip is issued depends upon the rate for a particular export product. The Ministry of Commerce notifies DEPB credit rates for export of an item. The DEPB scrip is freely transferable and can be used to debit the payment of duty at the time of clearance of goods except capital goods and goods mentioned in negative list.”

15. An attempt was made on behalf of the assessee to refer to Sl. No. 1(d) of the said notification which refers to goods exported under bond without payment of excise duty. It is only Sl. No. 1(e) which deals with benefit under the EXIM Policy but, at the same time, confines to DEEC and EPCG Scheme and not to the DEPB Scheme. Sl. Nos. 1(a), (b), (c) and (d), all deal with export of goods in the normal course, where duty becomes payable under the provisions of Central Excise Act, 1944 or the Customs Act, 1962, as the case may be, and to the Customs or Excise duties leviable on goods so exported. They do not deal with imports or exports under the EXIM Policy which fall in Sl. No. 1(e).

Viewed in this light, we are afraid that the contention of the appellants that they can very well claim alternative benefit of Notification No.94/96-Cus is misplaced.

19. The question framed in para 9 (iii) is therefore answered in the negative.



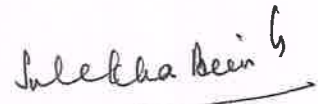
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20. In view thereof, we are unable to find any merit in all these appeals for which reason the same are dismissed.

(order pronounced in court on 31-08-2017 **A**)



(Madhu Mohan Damodhar)
Member (Technical)



(Sulekha Beevi C.S)
Member (Judicial)

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