IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No. 41211 of 2017

(Arising out of Order in Appeal No. 118 to 125/2017 (CXA-II) dated 28.02.2017 passed by the Commissioner of Central Excise (Appeals – II), Chennai)

Kone Elevator India Pvt. Ltd. **Appellant**
No. 50, Vanagaram Road
Ayanambakkam, Chennai – 600 095.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri Shivathanu Mohan, Advocate for the Appellant
Smt. Anandalakshmi Ganeshram, Authorised Representative for the Respondent

CORAM

Hon'ble Shri M. Ajit Kumar, Member (Technical)
Hon'ble Shri Ajayan T.V., Member (Judicial)

FINAL ORDER NO. 40303/2026

Date of Hearing: 02.09.2025
Date of Decision: 26.02.2026

Per M. Ajit Kumar,

This appeal is filed by the appellant against Order in Appeal No. 118 to 125/2017 (CXA-II) dated 28.02.2017 passed by the Commissioner of Central Excise (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellant is engaged in the manufacture of lift and escalator parts and accessories classifiable under Chapter Sub-heading 8431 3100 of the Central Excise Tariff Act, 1985. The appellant filed eight refund claims seeking refund of excise

duty paid on elevator components and accessories supplied to a project of M/s BHEL, which was exempt from duty under Notification No. 12/2012-CE dated 17.03.2012, as amended by Notification No. 34/2012-CE dated 10.09.2012. During scrutiny, it was observed that the appellant had not produced documentary evidence to establish that the incidence of duty had not been passed on to the consignee and Show Cause Notices were issued. Upon submission of disclaimer certificates, the refund claims were sanctioned by the Adjudicating Authority. Subsequently, revenue reviewed the order and filed an appeal before the Ld. Commissioner (Appeals) on the ground that the exemption under Sl. No. 338 of Notification No. 12/2012-CE is subject to fulfillment of the conditions prescribed at Sl. No. 43 of the Annexure thereto. In particular, clause (d) requires an undertaking from the Chief Executive Officer of the project certifying use of the goods in the specified project and liability to pay duty in case of non-compliance. The department contended that mere submission of handing-over certificates was insufficient to establish compliance with clause (d), as no such undertaking from the project CEO was furnished. The Commissioner (Appeals), after due process, held that the appellant had failed to satisfy the mandatory conditions of the notification, set aside the order of the Adjudicating Authority, and ordered recovery of the refunds sanctioned. Hence, the present appeal.

3. The learned Advocate Shri Shivathanu Mohan appeared for the appellant and Ld. Authorized Representative Smt. Anandalakshmi Ganeshram, appeared for the respondent.

4. We have examined the appeals and heard the parties. The dispute concerns eligibility to exemption under Sl. No. 338 of Notification No. 12/2012-CE, which is conditional upon the Project Chief Executive Officer certifying use of the goods in the specified project and accepting duty liability in case of non-compliance. The Department contends that submission of handing-over certificates does not satisfy the notification, as the requisite CEO undertaking was not furnished.

5. We find that the Original Authority at para 13.8 of the OIO has recorded that condition (d)(i) under Sl. No. 338 of Notification No. 12/2012-CE, which is conditional upon compliance with Sl. No. 43 of the Annexure, is found satisfied. He also felt that there was no requirement at the stage of refund for obtaining an undertaking from the CEO of the project. In the circumstances mere non-compliance with any procedural requirement should not entail rejection of the refund claim, unless the relevant statute or rule so mandates. As held by a five Judge Constitutional Bench of the Hon'ble Supreme Court in **Commissioner Vs Hari Chand Shri Gopal** [2010 (260) E.L.T. 3 (S.C.)], "if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential." Since actual compliance has been recorded by the Ld. Original Authority, we are of the opinion that the impugned order merits to be set aside.

6. Based on the discussions above we set aside the impugned order and allow the appeal. The appellant is eligible for consequential relief if any. The appeal is disposed of accordingly.

(Order pronounced in open court on 26.02.2026)

(**AJAYAN T.V.**)
Member (Judicial)

(**M. AJIT KUMAR**)
Member (Technical)

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