FAX : 011-26108426 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **30/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53496/2015-CU[DB]** dated **04/11/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	Name and Address of Appellant
1	C/Stay/1099/2006, C/MISC/536/2012	**C/268/2006**	St. Stephens Hospital TIS HAZARI, NEW DELHI
			Name and Address of Respondent
2			-C.C. NEW DELHI (IMPORT & GENERAL) New Custom House, Near I.G.I. Airport, New Delhi 110037.

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Copy To
3Advocate(s) / Consultant(s):

RAJEEV SHARMA & ANUJ HANDA
M-11, GREATER KAILASH-I,
NEW DELHI-110048

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
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 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. **16** Office Copy **17** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. I

Date of hearing / decision : 04.11.2015

For Approval and Signature:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

Customs Appeal No. 268 of 2006

(Arising out of order-in-original No. VIII(HQ)10/Adj/Commr/09/05 dated 30.06.2006 passed by the Commissioner of Customs, New Customs House, New Delhi).

St. Stephens Hospital — Appellant

Vs.

CC, Delhi — Respondent

Appearance:

None for the appellant-assessee
Sh. Rajiv Khanna, DR for the Revenue

Coram:

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R. K. Singh, Member (Technical)

Final Order No. 53496/2015

Per: R. K. Singh:

Appeal has been filed against order-in-original dated 30.01.2006 in terms of which customs duty demand of Rs.36,91,763/- was confirmed, the impugned goods were confiscated and allowed to be remeemed on fine of Rs. 1 lakh and penalty of Rs. 10,000/- was also imposed.

2. The facts of the case are as under:

The appellant imported medical equipment under two bills of entry claiming benefit of Customs Notification No. 64/1988-Cus. dated 01.03.1988 which was granted on the basis of Customs Duty Exemption Certificate (CDEC) issued by Directorate General of Health Service (DGHS). The said notification exempted medical equipment from whole of Customs duty and CVD when imported by certain categories of hospitals, subject to production of CDEC issued by DGHS, alongwith certain other conditions.

3. When the case was called today, there was no representation on behalf of the appellant nor has there been any request for adjournment. Accordingly, we proceed to decide the case on merit. In its appeal the appellant has contended that it had treated patents free upto the level prescribed in Notification No. 64/1988.

4. Ld. DR has contended that the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the case of ***Bharat Diagnostic Centre vs. Commissioner of Customs – 2014 (307) ELT 632 (SC)***

adding that in this case the DGHS withdrew the CDEC vide its letter dated 04.04.2001 as a result of which the appellant no longer remained eligible for the benefit of Notification No. 64/1988.

5. We find that CESTAT had earlier remanded this case for denovo adjudication after reverifying the data (now) furnished by the appellant regarding free treatment of the patients and the Commissioner vide the (denovo) impugned order came to the same finding and passed similar order as was passed earlier on 17.08.2004. However, this aspect does not remain of much significance in the light of the fact that the Supreme Court in the case of ***Bharat Diagnostic Centre*** (supra) has since held as under:

> "21. *Thereafter, the Custom Authorities issued a demand notice directing the appellant to pay the customs duty, which may have been for some other reasons including the withdrawal of the exemption certificate by the DGHS. We cannot take exception to the demand so made by them for the simple reason that the appellant would be eligible for exemption from payment of duty only if it had obtained an exemption certificate from the DGHS. If the foundation on which the appellant was entitled to claim exemption, i.e. the exemption certificate before the Customs Authorities was withdrawn by the competent authority, the natural consequences must follow, that being the non applicability of the exemption from custom duty. As a consequence of the absence of a valid exemption certificate, the appellant would be liable to pay appropriate custom duty.*
>
> *22. In the instant case, the DGHS duly issued an exemption certificate but subsequently the same was withdrawn by the same authority. If for any reason the appellant was aggrieved by such withdrawal, it should have questioned the same. Since having questioned the said withdrawal and having withdrawn, it later on, we are of the opinion that the appellant cannot take exception to the duty demand made by the respondent".*

6. Thus, the issue is no longer res-integra and is squarely covered against the appellant by the judgment of Supreme Court in the case of ***Bharat Diagnostic Centre*** as in this case also CDEC was withdrawn by DGHS. Therefore, we do not find any infirmity in the impugned order. The appeal is rejected.

(Justice G. Raghuram)
President

(R. K. Singh)
Member (Technical)

Pant