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: **17/11/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53387/2015-CU[DB]** dated **21/10/2015**

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/46/2010	**CONTINENTAL CONSTRUCTION LTD.** Continental House, 28, Nehru Palace, New Delhi
		Name and Address of Respondent
2		-C.C. (ICD) NEW DELHI ICD, Tughlakabad, New Delhi 110020.

Copy To

3Advocate(s) / Consultant(s):

Prem Ranjan Kumar,Adv
LGF 6/33, VIKRAM VIHAR,
LAJPAT NAGAR PART-IV,
NEW DELHI-110024

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066

Date of Hearing 21.10.2015

For Approval &Signature :

Hon'ble Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.C/46/2010-CU[DB]

[Arising out of Order-in-Appeal No.CC(A) Cus/ICD/326/2009, dated 30.10.2009 passed by the C.C.(Appeals), New Delhi]

M/s. Continental Construction Ltd. — Appellant

Vs.

C.C., New Delhi — Respondent

Appearance

Mr.Prem Ranjan Kumar, Advocate- for the appellant

Mr. M.R. Sharma, DR - for the respondent

CORAM: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 53387/2015 **dated 21.10.2015**

Per Mr. R.K. Singh :

Appeal has been filed against Order-in-Appeal dated 30.10.2009 which upheld the Order-in-Original dated 11.08.2009 in terms of which the appellant's refund claim for Rs.2,88,51,903/- was rejected.

2. The facts of the case are as under:-

The appellant filed a refund claim for refund of the customs duty paid on the construction materials and spare parts used in setting up of Mega Power Project on the ground that it was eligible for nil rate of duty applicable to the said project. It had imported the said materials at concessional rate of duty under Project Import (Registration No.06/2003, dated 01.01.2003 and 07/2003, dated 30.10.2003) during the period from 31.01.2002 to 22.01.2004. It claimed and was allowed the benefit of concessional rate of duty under project import as applicable under Notification No.21/2002 [S.No.399 (iv)] and it, accordingly, paid the applicable duties of customs. At the time of filing of Bills of Entry, the appellant did not claim the benefit of nil rate of duty under Notification No.21/2202 (S.No.400), dated 01.03.2002, nor did it produce the requisite documents/certificates required for being eligible for the said benefit. The Bills of Entry were thus finally assessed allowing the benefit claimed by the appellant under project import in terms of Notification No.21/2002 [S.No.399 (iv)], dated 01.03.2002. Therefore, the refund claim filed on the ground that as per Notification No.21/2002 (Sr.No.400) it was eligible for nil rate of duty ~~claimed~~ was rejected by the concerned Asst. Commissioner on the ground that the appellant had not sought the reassessment of the relevant Bills of Entry, citing judgements of Hon'ble Supreme Court in the cases of ***C.C. Vs. M/s. Flock (India) Pvt. Ltd. [2000 (120) EKT 285 (SC)]*** and ***Priya Blue Vs. CC (Prev.) [2004 (172) ELT 145 (SC)]***.

3. The appellant has contended that (i) the Bills of Entry categorically mentioned that the goods were imported for power generation project~~s~~ under project imports and also mentioned Notification No. 21/2002 but it wrongly mentioned serial number is 399 (iv) (instead of 400) of the Notification. (ii) The Order-in-Original clearly states that the imports were duly registered under project import and therefore the assessing authority should have assessed the Bills of Entry provisionally. (c) It cited judgements of Bombay High Court in the case of ***Hero Cycles Ltd. Vs. Union of India [2009 (240) ELT 490 (Bom.)]*** and Delhi High Court in the case of ***Aman Medical Products Ltd. Vs. CC, Delhi [2010 (250) ELT 030 (Del.)]*** in support of its contention.

4. Ld. Departmental Representative, on the other hand stated, that judgements of Bombay High Court and Delhi High Court cited by the appellant are not applicable because in this case duty was not paid under ignorance of law or by mistake and that at the relevant time the appellant was not entitled to the benefit of nil duty under serial No. 400 of Notification No.21/2002 –Cus as it did not satisfy the requisite conditions.

5. We have considered the contentions of both sides. We find that in the present case, the appellant itself claimed benefit of Notification No. 21/2002 [serial No. 399 (iv)] which was granted. It did not seek the benefit of the said Notification No. 21/2002 (serial No. 400) because at that time it did not satisfy the conditions required for extending the benefit of the said Notification No. 21/2002 (serial No. 400) as has also been noted by Commissioner (Appeals) in the impugned order that at the time of assessment of Bills of Entry the appellant did not claim benefit of Notification No.21/2002 (Sr.No.400) nor did it produce the requisite documents/ certificates required for claiming benefit under Notification No. 21/2002 (serial No. 400). Thus, it is obvious that contrary to what has been claimed by the appellant, at the time of assessment of Bills of Entry, it was entitled to the benefit of

the said Notification pertaining to serial No. 399 (iv) which it claimed and was not entitled to the benefit of serial No. 400 of Notification No. 21/2002 which it did not claim (nor could it have claimed) as it did not possess the requisite certificates/ documents. The judgements of Bombay High Court in the case of ***Hero Cycles Ltd. Vs. Union of India*** (supra) and Delhi High Court in the case of ***Aman Medical Products Ltd. Vs. CC, Delhi*** (supra) are clearly not applicable to the present case, because in those cases duty was paid due to ignorance. Indeed, in the circumstances of this case, the judgements of Supreme Court in the cases of ***C.C. Vs. M/s. Flock (India) Pvt. Ltd. [2000 (120) EKT 285 (SC)]*** and ***Priya Blue Vs. CC (Prev.)*** (supra) are squarely applicable and the appellant cannot be granted refund as it did not seek reassessment of Bills of Entry which were finally assessed at the time of clearance of goods.

6. In the light of the foregoing, we do not find any infirmity in the impugned order. The appeal is therefore dismissed.

05/11/15

(Ashok Jindal)
Member (Judicial)

(R.K. Singh)
Member (Technical)

SSK