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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: **09/06/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51787/2015-CU[DB]** dated **03/06/2015**

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/625/2009	**ONGC LTD. THROUGH ED-COED** (WESTERN OFFSHORE BASIN BOMBAY) PRIYADARSHINI, EASTERN EXPRESS HIGHWAY SION, MUMBAI-400022.
		Name and Address of Respondent
2		-C.C. NEW DELHI (IMPORT & GENERAL) New Custom House, Near I.G.I. Airport, New Delhi 110037.

3 Advocate(s) / Consultant(s):

Shiv Prakash Pandey, Advocate,
358, LAW CHAMBERS,
DELHI HIGH COURT,
NEW DELHI,-110003

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 C.D.R. **15** Office Copy **16** 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/Order : 3.6.2015

Appeal No. C/625/2009-CU(DB)

[Arising out of Order-in-Appeal No. CC(A)Cus/129/114/09 dated 14.5.2009 passed by the Commissioner of Customs (Appeals), New Delhi]

For Approval & Signature :

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?	
2.	Whether it would be released under Rule 27 of the 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 Department Authorities?	

ONGC Ltd. Through ED-COED — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:

Shri T.R. Rustogi, Advocate - for the Appellant

Shri B.B. Sharma, D.R. - for the Respondent

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

F. Order No. 51787/2015

Per **Ashok Jindal :**

The appellant is in appeal against the impugned order denying the benefit of Notification No. 21/2002-Cus. dated 1.3.2002. The facts arising out of the appeal are that the appellant imported software for Seismic purposes. These materials under import are software requiring licence to appellant and were to be used only by the limited authorised officers of the ONGC. These goods were required for Seismic work for petroleum operations under Petroleum Exploration Licence and were granted by Govt. of India. On importation of the said goods, the appellant filed Bill of Entry claiming the benefit of Notification No. 21/2002-Cus. dated 1.3.2002 Sr. No. 214. The said benefit of notification was denied by the lower authorities, therefore, appeal is before us.

2. The ld. Counsel for the appellant submits that to claim the benefit of Notification No. 21/2002-Cus. dated 1.3.2002, Sr. No. 214 the appellant is required to fulfil the condition No. 29(b) and as per the said condition if the appellant produced a certificate from duly authorised officer of Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Govt. of India, to the effect that the imported goods are required for petroleum operations. The goods are to be specified in list 12 of the said notification.

3. It is the submission of the ld. Counsel that the appellant has produced the required certificate for claiming the exemption and goods imported by them are squarely covered by list 12 of the said notification. Therefore, they are entitled to avail the benefit of the notification. Consequently, the impugned order is required to be set aside. He also submits that a similar issue came up before the

Hon'ble Apex Court in the case of ***CC, Mumbai Vs. Tullow India Operations Ltd.*** – 2005 (189) ELT 401 (SC) wherein the benefit of Notification No. 121/99-Cus dated 28.2.99 was sought for importation of the identical goods by the assessee and Hon'ble Apex Court allowed the benefit of notification. Further, the said notification is identical to the Notification No. 21/2002-Cus. dated 1.3.2002 at Sr. No. 214. He also relied on the decision of the Hon'ble Apex Court in the case of ***ONGC Ltd. Vs. CCE*** (in appellant's own case) – 206 (201) ELT 321 (SC). To say that again the Hon'ble Apex Court to intervene in importation of similar goods and granting the benefit of the said notification. Therefore, the impugned order has to be set aside and appeal be allowed.

4. On the other hand, the ld. D.R. reiterated the findings of the impugned order.

5. Heard the parties. Considered the submissions.

6. The issue before us in this matter is that whether the appellant is entitled to avail the benefit of Notification No. 21/2002-Cus. dated 1.3.2002 Sr. No. 214 or not.

7. For better appreciation, the relevant entries of the said notifications are extracted here as under :

Table

S. No.	Chapter or Heading or sub - heading	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
214.	84, or Any other Chapter	Goods specified in List 12 required in connection with petroleum operations undertaken under petroleum exploration licenses or mining leases, as the case may be, issued or renewed after the 1st of April, 1999 and granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination Basis	Nil	Nil	29

"(b) Where the importer is a licensee, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, the following, namely, a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the licences referred to in that clause."

8. On examination of the said notification, we find that to claim the exemption at Sr. No. 214, the appellant is required to produce a certificate from duly authorised officer of Directorate of Hydro Carbons, in the Ministry of Petroleum and Natural Gas, Govt. of India to the effect that the imported goods are required for petroleum imported goods are required for petroleum operations. Further the goods must be specified in list 12 of the said notification and the items imported by the appellant is squarely covered by item No. (1) of list – 12 i.e. is other material required for seismic work or other types of Geophysical and Geochemical surveys for onshore and

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offshore activities. Further, we find that prior to 2002, Notification No. 20/99-Cus. dated 28.2.1999 was in force and Sr. No. 184 governs the importation of the items in question for availing the benefit of the said notification. The issue whether the assessee is entitled to take the benefit of said notification on the identical item cam before the Hon'ble Apex Court in the case of ***Tullow India Operations Ltd.*** (supra), wherein the Hon'ble Apex Court has observed as under :

> "**23.** Both the importers are licensees. Indisputably, they were entitled to the benefit of the exemption notification subject, of course, to the condition that they would produce the essentiality certificate granted by the Directorate General of Hydrocarbons at the time of importation of goods. Grant of essentiality certificate was not in the hands of the assessees. It was a function of a department of the Central Government. The essentiality certificate admittedly was not granted by the Directorate General of Hydrocarbons within a reasonable time. The importers could not be blamed therefor. It is possible that delay in granting the said essentiality certificate was by way of default on the part of the authorities concerned.
>
> **25.** Construction of an eligibility clause contained in an exemption notification depends *inter alia* upon the purpose for which an exemption is sought to be granted. The exemption notification was issued by the Central Government in exercise of its power conferred upon it under sub-section (1) of Section 25 of the Customs Act. An exemption thereunder is granted, if the Central Government is satisfied that it is necessary so to do in public interest. Such exemption can be granted either absolutely or subject to such conditions, as may be specified therein. Such conditions are required to be fulfilled before or after clearance as may be specified. Such exemption would be in relation to the goods of specified description from the whole or any part of duty or customs leviable thereon

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27. ONGC is a licensee for exploration of petroleum products. ONGC has specifically been mentioned at Serial No. 182 of the said notification. It is not in dispute that importation, if any, has been made in connection with petroleum operations to be undertaken under petroleum exploration licenses granted by the Government of India on nomination basis. The benefit of exemption notification would *inter alia* be available to the licensee if it is shown in terms of a certificate granted by the Directorate General of Hydrocarbons and the Ministry of Petroleum and Natural Gas that the imported goods are required for petroleum operation referred to in clause (a) of condition No. 34 and under the licence referred to herein.

28. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas of the Government of India. The functions performed by it are public functions. The notification never contemplated that a public functionary, having regard to the importance of the subject matter and in particular when such importations are being made in public interest, would not dispose of the application for grant of essentiality certificate within a reasonable time so as to enable the importer to avail the benefit thereof. Applicants for grant of such certificates, having regard to their importance, should have been processed by the Directorate General of Hydrocarbons as expeditiously as possible but they did not choose to do so probably having regard to the fact that no time schedule therefor was prescribed. It is trite that when a public functionary is required to discharge its public functions within a time specified therefor, the same would be construed to be directory in nature. [See *P.T. Rajan* v. *T.P.M. Sahir and Others* - (2003) 8 SCC 498 and *Punjab State Electricity Board Ltd.* v. *Zora Singh and Others* - (2005) 6 SCC 776]

35. The essentiality certificate, thus, must be treated to be a proof of the fact that the importers have fulfilled the conditions enabling them to obtain the benefit under the exemption notification.

36. The principles as regard construction of an exemption notification are no longer *res integra*; whereas the eligibility clause in relation to an exemption notification is given strict meaning wherefor the notification has to be interpreted in terms of its language, once an assessee satisfies the eligibility clause, the exemption clause therein may be construed liberally. An eligibility criteria, therefore, deserves a strict construction, although construction of a condition thereof may be given a liberal meaning.

38. It is true that ordinarily, the golden rule of literal interpretation must be given effect to. But it is also well-settled that where literal interpretation gives rise to an anomaly of absurdity; the same should be avoided. [See *Ashok Lanka and Another* v. *Rishi Dixit and Others* - (2005) 5 SCC 598]; *Colgate Palmolive (India) Ltd.* v. *MRTP Commission and Others* - (2003) 1 SCC 129]".

9. We further find that a similar issue came up before the Hon'ble Apex Court in appellant's own case (supra) wherein the Hon'ble Apex Court observed as under :

"**7.** The matter came up before this Court at the instance of the Appellant. It filed an application for urging additional grounds *inter alia* relying on or on the basis of the said Essentiality Certificate granted in its favour on 26-3-2004. This Court, opining that grant of essentiality certificate should be treated to be a proof of the fact that the Appellants had fulfilled the conditions enabling them to obtain the benefits under the aforementioned exemption notification, remitted the matter to the Commissioner for consideration thereof afresh having regard to the similar directions issued by the Tribunal in the case of *Tullow*.

14. It may be true that grant of the essentiality certificate was itself dependent upon the question as to whether the Appellant was possessed of a valid oil exploration licence or not. It is, however, equally true that right to renewal of a licence is a valuable right. [See *D. Nataraja Mudaliar* v. *The State Transport Authority, Madras*, AIR 1979 SC 114] The Appellant applied for grant of renewal of the said licence before its expiry. The said renewal has been granted with a retrospective effect. In law, thus, the Appellant had been holding a valid licence continuously. The factual events as noticed hereinbefore clearly show that the Appellant's application for grant of essentiality certificate by the Directorate General of Hydrocarbons was not entertained in absence of renewal of the licence. The application was returned only for that purpose. The Appellant filed its application for grant of essentiality certificate within two days from the date of grant of the licence with retrospective effect and then thereafter sent several reminders. The conduct of the Appellant must, therefore, be judged from the factual matrix obtaining therein. We, therefore, are unable to agree with the opinion of the learned Commissioner that the Appellant made any misrepresentation before this Court or that the Directorate General of Hydrocarbons had shown any favour to it. Once it is held that the Ministry of Petroleum had renewed the licence and the Directorate General of Hydrocarbons had issued the essentiality certificate, the conditions precedent for obtaining exemption in terms of the exemption notification stood fully satisfied.

15. This Court, times without number, has construed such exemption notifications in liberal manner. [See *Commissioner of Customs (Imports), Mumbai* v. *Tullow India Operations Ltd.,* (2005) 13 SCC 789, [See *Tata Iron & Steel Co. Ltd.* v. *State of Jharkhand and Others,* (2005) 4 SCC 272; *Government of India and Ors.* v. *Indian Tobacco Association,* (2005) 7 SCC 396; *Commnr. of Central Excise, Raipur* v. *Hira Cement,* JT 2006 (2) SC 369 and *P.R. Prabhakar* v. *Commissioner of Income Tax, Coimbatore,* 2006 (7) SCALE 191] If, thus, the Appellant was entitled to the same, it should not be denied the benefits thereof. It is directed accordingly."

and thereafter the Hon'ble Apex Court in both the cases allowed the benefit of notification.

10. We find that the item imported by the appellant in this case is similar to the item imported in the case of ***Tullow India Operations***

Ltd. (supra) i.e. IT software and also observed that in this case the item imported by the appellant is squarely covered by item No. (1) of Schedule 12 attached as per Sr. No. 214 to the Notification No. 21/2002-Cus dated 1.3.2002. Further, the appellant has produced a certificate from duly authorised person of Directorate General of Hydro Carbons, in the Ministry of Petroleum and Natural Gas, Govt. of India to the effect that imported goods are required for petroleum operations. In these circumstances, we hold that the appellant has complied with the condition of Notification No. 21/2002-Cus. dated 1.3.2002. Therefore, the appellant is entitled to avail the benefit of the said notification.

11. Therefore, we do not find merit in the impugned order, the same is set aside. Appeal is allowed with consequential relief.

(Pronounced in Court)

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(Ashok Jindal)
Member (Judicial)

(R.K. Singh)
Member (Technical)

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