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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

EXCISE APPEAL BRANCH

Date 19/11/2009

Appeal No. E/314 /2006 - EX[DB]

Assistant Registrar
C.E.S.T.A.T, New,Delhi

To :
C.C.E. KANPUR,
117/7, SARVODAYA NAGAR, KANPUR 208005.

C.C.E. KANPUR Appellant
Vs
JYOTI CAPSULES Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1241/ 2009 EX[DB]** dated 17-11-09 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
   JYOTI CAPSULES
   123/37, SARESH BAG FACTORY AREA, FAZALGANJ, KANPUR
2. Adv. / Consult SH. T. R. RUSTOGI, ADV., SD-84, TOWAR APARTMENTS PITAMPURA, DELHI-34
3. C.D.R
4. ~~J.C.D.R~~.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB
Excise Appeal No.E/314 of 2006
E/CO/136 of 2006
(Arising out of Order-in-Appeal No.193-CE/APPL/KNP/2005 dated 18.03.2005 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur)

Date of Hearing/Decision: 28.10.2009

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)
Hon'ble Mr.D.N.Panda, Judicial Member

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Commissioner of Customs & Central Excise, Kanpur — Appellant

Vs.

M/s. Jyoti Capsules — Respondent

Present for the Appellant : Shri S.R.Meena, SDR
Present for the Respondent: Shri T.R.Rustogi, Advocate

Coram:Hon'ble Mr.Veeraiyan, Member (Technical)
Hon'ble Mr.D.N.Panda, Judicial Member

Final **ORDER NO.** 1241/09-EX

PER: M.VEERAIYAN

The appeal No.E/314 of 2006 is field by the department against the Order-in-Appeal No.193-CE/APPL/KNP/2005 dated 18.03.2005 passed by the Commissioner of Customs & Central Excise (Appeals), Kanpur. Cross objection No.136 of 2006 is connected to this appeal and merely in support of order of the Commissioner (Appeals).

2. Heard both sides.

3. The relevant facts in brief are that the respondents manufacture medicine falling under chapter 30 and in particular they manufacture Chloramphenicol eye ointment I.P. They supplied the Chloramphenicol eye ointment I.P. to M/s.Hindustan Latex Ltd. who in turn supplied the same, in pursuance of International Competitive Bidding, to a project funded by International Development Association (IDA). The goods have been cleared without payment of duty availing the benefit of Notification No.108/95-CE dated 28.08.1995. Show cause notice was issued alleging that IDA was not an organisation listed under Notification No.108/95-CE for the purpose of extending exemption. It was also alleged that the project was not financed by any international organisation approved for the said purpose. The original authority, accordingly, confirmed the demand of duty of Rs.8,56,057/- alongwith interest and imposed equal amount of penalty. On appeal filed by the appellant, the Commissioner (Appeals) held that IDA was part of World Bank and that the basis for demand of duty, as held by the original authority, was not sustainable and accordingly allowed the appeal. Hence, the Department is in appeal.

4. Learned SDR submits that, as held by the original authority, IDA is not specifically mentioned in the annexure to the Notification as an institution eligible for grant of benefit. IDA is also not in the list of organizations specified under United Nations (privileged and Immunities) Act, 1947 and the said includes only International Bank

for Reconstruction and Development which is part of World Bank. He seeks setting aside the order of the Commissioner (Appeals) and restoration of order of original authority.

5. Learned Advocate for the respondents took us through the said notification. He particularly drew our attention to the different three different categories of supplies envisaged in the said notification, first relating to the goods intended for official use of the United Nations or International Organizations, the second relating to supplies made to International Organisation listed in the annexure to the Notification for project undertaken by them or project financed by such organisations listed in the annexure to the Notification and thirdly supplies which are intended to be supplied to a project financed by the World Bank, Asian Development Bank or any other International Organisations other than those listed in the annexure to the notification. He fairly concedes that IDA is not covered under the category of organisations listed in the annexure to the Notification. His submission was that his case is covered under clause (c) of the proviso to the notification which relates to the goods supplied to projects financed by "the Word Bank….." He submits that the World Bank consists of two parts one referred to as International Bank for Reconstruction and Development (IBRD) and other referred to as International Development Association (IDA). Both these are part and parcel of World Bank. IDA focuses its activities to poorer countries in the world. He relies on extract from websites of World Bank and IDA in support of his claim that IDA is part and parcel of the World Bank. He draws our attention to the fact that the Work Bank

has other affiliates such as International Finance Corporation etc. but IDA is a part and parcel of the World Bank. He further submits that show cause notice was issued on the ground that supplies were made to a project which was not funded by an approved institution. It is a fact that IDA cannot be considered as International Organization listed in the annexure to the said notification. But the supplies to World Bank is specifically covered under clause (c) of the proviso to the notification and that IDA being part and parcel of the World Bank, they are eligible for exemption under the notification. He seeks upholding the order of the Commissioner (Appeals). He also relies on various decisions of the Tribunal particularly the decision in the case of IBM India Pvt.Ltd. vs. CCE, Pondicherry reported in 2008 (223) ELT 429 (Tri.-Chennai) upholding the benefit of exemption to goods supplied to a project financed by IDA and also the decision of the Tribunal in the case of Nestor Pharmaceuticals Ltd. vs. CCE, Delhi reported in 2008 (116) ELT 477 (Tribunal) which also approved the concession in respect of supplies made to IDA of the World Bank.

6. We have carefully considered the submissions from both sides. The Notification No.108/95-CE reads as follows:-

"*The Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts all goods falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (herein after referred to as the said goods) when supplied to the United Nations or an International Organization for their official use or supplied to the projects financed by the said United Nations or an International Organization and approved by the Government of India from the whole of:-*

(i) the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944 (1 of 1944) and

(ii) the addition duty of excise leviable thereon under sub-section (1) of section 3 of the Additional Duties of Excise (Goods of Special Importance), 1957 (58 of 1957).

Provided that before clearance of the said goods, the manufacturer produces before the Assistant Commissioner of Central Excise having jurisdiction over his factory:-

(a) in the case said goods are intended for the official use by the United Nations or an International Organization that the said goods are intended for such use;

(b) in case the said goods are

(i) supplied to an international organization listed in the annexure appended to this notification for use in a project that has been approved by the Government of India and financed (whether by a loan or a grant) by such an organization, a certificate from such an organization that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India; or

(ii) supplied to a project that has been approved by the Government of India and financed (whether by a loan or a grant) by International an organization listed in the said annexure, a certificate from an officer not below the rank of Deputy Secretary to the Government of India, in the ministry of Finance (Department of Economic Affairs) that the said gods are required for the execution of the said project and the said project has duly been approved by the Government of India.

(c) in case the said goods are intended to be supplied to project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank or any international organization other those listed in the annexure, and

(i) If the said project has been approved by the Government of India, a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of Joint Secretary to the Government of India, that the said goods are required for the execution of the said project and the said project has duly been approved by the Government of India, and

(ii) If the said project has been approved by the Government of India for implementation by the Government of State or a Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or Union Territory, that the said goods are required for the execution of said project and the said project has duly been approved for implementation by the Government of State.

Explanation, -For the purpose of this notification, -

(a) "international organization" means an international organization to which the Central Government has declared in pursuance of section 3 of United Nations (Privileges and Immunities) Act, 1947 that the provisions of the Schedule to the said Act shall apply;

(b) "Line Ministry" means a Ministry in the Government of India, which has so been nominated with respect to a project, by the Government of India, in the

Ministry of Finance (Department of Economic Affairs).

ANNEXURE

1. United Nations development Programme,
2. United Nations International Children's Fund
3. Food and Agricultural Organization
4. International Labour Organization,
5. World Health Organization
6. United Nations Population Fund
7. United Nations World Food Programme
8. United Nations Industrial Development Organization"

7. We find that supplies made to different organizations for their use and supplies to projects funded by the different organizations have been granted exemption by the above mentioned notification. Clauses (a), (b) and (c) of proviso to Notification clearly envisages exemption to different categories of the goods. For extending the concession, different certifying procedures have been prescribed for supplies made to different categories of organizations/ or the projects funded by the organizations. Clause (b) of proviso to Notification only relates to exemption to the goods supplied to projects funded by organizations listed in the Annexure to the Notification. Clause (c) of proviso to Notification clearly envisages exemption to the goods which are intended to be supplied to a project financed by the World Bank. The materials placed before us indicate that the World Bank functions in two parts/wings as IDA and IBRD. IDA has been designated as wing in-charge of activity in poor countries of the world. We are in agreement with the submission

made by the learned Advocate that International Development Association (IDA) is part and parcel of the World Bank. Therefore, supplies made to IDA ought to be treated as supplies made to World Bank and eligible for the concession envisaged under clause (c) of the proviso to the Notification. Non mention of IDA in the United Nations (Privileges and Immunities) Act, 1947 does not affect the status of the IDA as part of World Bank. Non listing of IDA in the United Nations (Privileges and Immunities) Act, 1947 has no relevance to the grant of exemption under the impugned notification as supplies made to World Bank clearly are covered by the notification. We also find that in respect of supplies made to project funded by IDA, the Tribunal in the case of IBM India Pvt.Ltd. vs. CCE, Pondicherry and in the case of Nestor Pharmaceuticals Ltd. vs. CCE, Delhi cited (supra) has upheld the grant of exemption under the impugned Notification. In view of the above, we do not find any merit in the appeal and we do not find any reason to interfere with the order of the Commissioner (Appeals).

7. The appeal filed by the department is ,therefore, rejected and cross objection is also disposed of.

(M.VEERAIYAN)
MEMBER (TECHNICAL)

(D.N.PANDA)
JUDICIAL MEMBER

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