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

Appeal No. C/563 /2006 - CU[DB] Date 06/07/2009

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

To :
M/S HI-TECH MEDICAL PRODUCT LTD
GIDA GORAKHPUR(UP)

M/S HI-TECH MEDICAL PRODUCT LTD Appellant
Vs
C.C.ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/243/ 2009 CU[DB]** dated 25.06.09 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   C.C.ALLAHABAD
   38,M.G.MARG,CIVIL LINE,ALLAHABAD.
2. Adv. / Consult
   MR.J M SHARMA, CONSLT.
   G-31, BASANT ENCLAVE, NEW DELHI – 57.
3. S.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
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision: 25.6.2009

Customs Appeal No.563 of 2006

Arising out of the order in appeal No.71/CE/Alld/06 dated 20.6.06 passed by the Commissioner (Appeals), Central Excise, Allahabad.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

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 should be released under Rule 27 of 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

M/s Hi-Tech Medical Product Ltd. .... Appellant

Vs.

C.C., Allahabad .... Respondent

Appearance:

Shri J.M. Sharma, Consultant for the appellants/applicants
Shri Fateh Singh, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Oral Order No. C/243/09

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 71/CE/Alld/06 dated 20.6.06.

2. Heard both sides.

3. The relevant facts, in brief, are that the appellant imported Cannulae during the months of April, 2004, May, 2004 and June, 2004 through Delhi Air Cargo Complex and availed the benefit of concessional rate of duty prescribed under Notification No.21/2002-Cus dated 1.3.2002 serial No.366

to which the condition 11 applies. The appellant, at the time of import, produced an undertaking before the Deputy Commissioner at the Port of import that they will produce a certificate of utilisation "within three months or such extended period" from the jurisdictional Central Excise authorities. It is claimed that the entire quantity could not be utilised within the stipulated period of three months but the entire goods have been utilised for the intended purpose though not within three months Thereafter, they applied to the jurisdictional Assistant Commissioner Central Excise for issue of certificate of utilisation of the entire quantity of Cannulae imported by them so as to produce the certificate to the Deputy Commissioner, in-charge of the Port of import. The jurisdictional Central Excise authorities, instead of issuing the certificate indicating the factual position regarding utilisation (whether done within three months or beyond the three months) has chosen to issue show cause notice for alleged non-complinace of the condition 11 of the said Notification and confirmed the demand of duty and imposed penalty. Commissioner (Appeals), on appeal by the party set aside the penalty and upheld the demand of the duty. He did not go into the issue of jurisdiction of the Central Excise authorities on the ground that it was not agitated before the original authority.

4. Learned Consultant for the appellant submits that the Customs Notification does not envisage the following of the procedure prescribed under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. The condition envisages only an undertaking to be given at the time of import and producing utilisation certificate to the Customs authorities within three months or such extended period as may be prescribed by the Customs authorities. The Central Excise authorities have gone beyond the jurisdiction to deny the exemption availed by them under Notification 21/2002-Cus at the time of importation without any jurisdiction.

5. Learned DR submits that the appellant has been following the procedure under the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 and therefore, the

jurisdictional Central Excise authorities have the powers in terms of Rule 8 to demand duty for not fulfilling the condition under which the goods were imported.

6.1 We have carefully considered the submissions from both sides. It is not in dispute that the condition under which the concessional rate of duty has been given to Cannulae does not include any condition to follow the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996. At any rate, the said Rule is basically to ensure that the goods cleared under concessional rate of duty is utilised for the intended purpose. In the present case, there is no dispute that the goods imported have been used for the intended purpose. The dispute is whether the imported goods have been used within three months or beyond three months.

6.2 At this juncture, it would be appropriate to reproduce the condition 11 of the said Notification which reads as under:

> ***":If the importer furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that-***
>
> ***(a) the parts or, as the case may be, the spare parts shall be used for the manufacture or maintenance, as the case may be, of the specified medical equipment;***
>
> ***(b) he shall, within three months or such extended period that the said Deputy Commissioner or the Assistant Commissioner may allow, produce-***
>
> ***(i) in the case of parts, a certificate from the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction over the factory manufacturing the specified medical equipment, to the effect that the parts have been used in the manufacture of the specified medical equipment; or***
>
> ***(ii) in the case of spare parts, necessary evidence to the satisfaction of the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that the spare parts have been used for the maintenance of the specified medical equipment; and***
>
> ***(c) he shall pay, on demand, in the event of his failure to comply with the above conditions, an amount equal to the difference between the duty leviable on such quantity of the parts or, as the case may be, spare parts, but for the exemption under this notification and that already paid at the time of importation."***

From the above, it is clear that the undertaking to be given in terms of clause (a) condition 11 is to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs in-charge of the Port of import. The power of granting the extension of period mentioned therein is also with the said Deputy Commissioner or Assistant Commissioner. The role of the Central Excise authorities is basically limited to give a certificate about the use of the goods as mentioned in the said notification. What was expected from the jurisdictional Central Excise authority was to give a certificate indicating the factual position about the use and the time frame in which these goods were used and such a certificate has to be produced to the Customs authorities and it is for the Customs authorities to see the fulfilment of the condition under which the goods have been imported. As following the procedure under the Customs (Import of Goods at Concessional Rate of duty for Manufacture of Excisable Goods) Rules, 1996, has not been prescribed as a condition , the question of involving the jurisdiction under the said Rules does not arise. Under these circumstances, we find merit in the submission of the learned Consultant.

7. The appeal is allowed with consequential relief.

(M. Veeraiyan,
Member (Technical)

(P.K.Das)
Member (Judicial)

scd/