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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

Appeal No. E/2196/2009 - EX[DB] WITH E/S/2270/2009-EX

Date 09/08/2010

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

To :-
M/S NATIONAL ENGINEERING INDUSTRIES LTD

KHATIPURA ROAD, JAIPUR.

M/S NATIONAL ENGINEERING INDUSTRIES LTD — Appellant

Vs

C.C.E. JAIPUR I — Respondent

STAY ORDER NO.515/2010-EX

I am directed to transmit herewith a certified copy of **Final order No.** 559/ **2010 EX[DB]** dated 12-7-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

   C.C.E. JAIPUR I

   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.

2. Adv. / Consult

   SH. BIPIN GARG, ADV.,
   B-1/1289-A, VASANT KUNJ,
   N. DELHI - 70

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file
16, HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Stay Application No. 2270 of 2009 in
Excise Appeal No. 2196 of 2009

DATE OF HEARING : 12.07.2010
DATE OF DECISION : 12.07.2010

M/s National Engg. Industries Ltd. .... **Appellants**
(Rep by Sh. Bipin Garg, Adv.)

VERSUS

CCE, Jaipur-I .... **Respondent**
(Rep. by Sh. R.K. Verma, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

STAY **ORAL ORDER NO.** 515/10-CB

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the learned DR for the respondent.

2. As we proposed to dispose of the appeal itself, the application is allowed while waiving the requirement of pre-deposit and directing the Registry to place the appeal for final hearing forthwith. Application stands disposed of accordingly.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 2196 of 2009

(Arising out of Order-in-Appeal No. 88(DK)CE/JPR-I/09 dated 13.05.2009 passed by the Commissioner of Central Excise (Appeals), Jaipur).

DATE OF HEARING : 12.07.2010
DATE OF DECISION : 12.07.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

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?	Y

M/s National Engg. Industries Ltd. .... **Appellants**
(Rep by Sh. Bipin Garg, Adv.)

VERSUS

CCE, Jaipur-I .... **Respondent**
(Rep. by Sh. R.K. Verma, DR)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Final ~~ORAL~~ ORAL ORDER NO. 559/10-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard the learned advocate for the appellants and the learned DR for the respondent.

2. This appeal arises from the order dated 13.05.2009 passed by the Commissioner (Appeals), Jaipur, whereby the appeal filed by the appellants against the order passed by the adjudicating authority has been rejected. The adjudicating authority, namely, the Additional Commissioner, Jaipur, by his order dated 15th February, 2008 had confirmed the demand of duty and cess totaling to Rs. 22,49,354/- against the appellants along with interest thereon.

3. The appellants are engaged in the manufacture of Tapper/Roller/Cartridge Bearings classifiable under Chapter Heading 8482.00 of the First Schedule to the Central Excise Tariff Act, 1985. In the course of audit, it was revealed that the appellants had cleared Bearings Axle Box without payment of excise duty and education cess amounting to Rs. 22,49,354/- supplied to M/s BEML during the period from November, 2004 to June, 2005 and had sought to claim exemption under Notification No. 63/95-CE dated 16.03.1995. While contending that the appellants were not entitled to avail the benefit of the said Notification, show cause notice dated 25th November, 2005 came to be issued to the appellants which was contested by the appellants without any success as the claim in that regard was rejected by the adjudicating authority by its order dated 28th April,

2006. Being aggrieved, the matter was carried in appeal before the Commissioner (Appeals) who by its order dated 30th November, 2006 dismissed the appeal. The appellants, therefore, preferred appeal before this Tribunal being Appeal No. E/611/07 which came to be disposed of on 19th April, 2007 by setting aside the order passed by the Commissioner (Appeals) and remanding the matter to the adjudicating authority for deciding afresh after affording an opportunity of hearing to the appellants. Pursuant thereto, the matter was decided by the Additional Commissioner vide its order dated 15th February, 2008 and being aggrieved was carried in appeal before the Commissioner (Appeals) which came to be disposed of by the impugned order dated 13th May, 2009.

4. Drawing our attention to the order passed in the earlier round by the Commissioner (Appeals) and the order passed by the Tribunal on 19th April, 2007, the learned advocate for the appellants submitted that, the fact that the appellants were entitled for the benefit of the Notification No. 63/95-CE was clearly held in favour of the appellants by the Commissioner (Appeals) by the said order and the remand was merely to verify the documentary proof to be produced by the appellants regarding the fact that the goods supplied by the appellants were further supplied to the Ministry of Defence and not for any other purpose and being so the scope of the inquiry before the adjudicating authority was limited to that aspect. The authority below, however, ignoring the same has adjudicated the matter afresh and

53/92 dated 08.07.1992 as well as the letter of the Commissioner dated 07.11.2003 denied the benefit of the said Notification to the appellants. Referring to the decision of the Apex Court in the matter of **CCE, Bolpur vs Ratan Melting & Wire Industries,** reported in 2008 (231) ELT 22 (SC), the learned advocate submitted that, para 6 thereof clearly states that the Circulars and instructions issued by the Board are binding on the authorities and it is only when the law is settled by the Supreme Court and the High Courts that the authorities may ignore any such Circular or instructions, contrary to such law settled by the Supreme Court and the High Courts, and not otherwise. In the case in hand, the Trade Notice in question has not been set aside or held to be void by the Supreme Court or any other High Court.

5. The learned DR, on the other hand, submitted that, the remand was for adjudication afresh and, therefore, no fault can be found with the impugned order passed by the authorities below after fresh hearing of the matter. He further submitted that the Trade Notice No. 53/92 dated 08th July, 1992 relates to Notification No. 184/86 and it cannot be applied to the Notification in question which is different from the Notification No. 184/86. As regards the letter dated 07.11.2003, the learned DR submitted that, the Commissioner has no authority to extend the benefit of any Notification beyond the scope of the Notification itself. Since Trade Notice did not relate to the Notification in question, according to the learned DR no fault can be found with the impugned order for

not extending the said benefit in terms of the said Trade Notice to the appellants.

6. As regards the first contention that the issue, as to whether the appellants is a job worker or not and that the finding in that regard was already given by the Commissioner (Appeals) and is binding upon the Department and the authorities below could not have gone beyond the said finding, it is to be noted that the order dated 30th November, 2006 passed by the Commissioner was subject matter of appeal before the Tribunal in Appeal No. E/611 of 2007. The Tribunal while dealing with the said order held that, "Therefore, the impugned order is set aside and the matter is remanded to the adjudicating authority for deciding afresh after affording an opportunity of hearing to the appellants. The appeal is disposed of by way of remand". Plain reading of these findings and direction by the Tribunal discloses that, the order passed by the Commissioner (Appeals) on 30.11.2006 merged in the said order of the Tribunal. The said order of the Commissioner (Appeals), therefore, cannot have independent existence from the order passed by the Tribunal. Apparently, the Tribunal has set aside the said order and the consequences thereof are that the finding arrived at by the Commissioner (Appeals) also stands set aside. It is, therefore, not possible for the appellants to contend that the authorities below could not have travelled beyond the findings arrived at by the Commissioner (Appeals) in the said order. Besides, the Tribunal had remanded the matter for "deciding afresh" which clearly discloses that the adjudicating

authority had to decide the matter afresh in accordance with the provisions of law after taking into consideration the evidence which was allowed to be produced by the appellants. Being so, the said finding of the Commissioner (Appeals) was nowhere subsisting either for the benefit of the appellants or for the prejudice to the respondents when the matter was remanded by the Tribunal after setting aside the said order of the Commissioner (Appeals).

7. As regards the second contention relating to the entitlement of the benefit of the Notification, the authorities below after referring to the observations in the Tribunal's order dated 19th April, 2007 that the evidence discloses that M/s BEML manufactured the goods by using the goods supplied by the appellants and the same were further supplied to the Ministry of Defence was not before the lower authorities, the appellants were permitted to produce the said evidence and the matter was remanded for fresh adjudication after considering such additional evidence. After taking into consideration the said evidence on record, the authorities below have held that, even considering the said material which would disclose that M/s BEML used to manufacture the goods with the help of the inputs supplied by the appellants and the goods so manufactured by M/s BEML were being supplied to the Defence Ministry that itself will not entitle to the appellants to claim the benefit of the said Notification.

8. Even one peruses the Notification No. 63/95-CE dated 16th March, 1995, as amended from time to time, it would disclose

that the same grants exemption to the goods specified in column no. (2) of the table annexed to the said Notification and falling under the Schedule to the Central Excise Tariff Act, 1985 as per the conditions specified in the corresponding entry in column no. (3) of the table of the said Notification from the whole of the duty of excise leviable thereon as specified in the said Schedule and the additional duty of excise leviable thereon under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 on the goods specified against serial no. 1 of the said table. The appellants were claiming exemption with reference to serial no. 2 of the said table. Serial no. 2 of the said table reads thus :

S.NO.	**DESCRIPTION OF GOODS**	**CONDITIONS**
(1)	(2)	(3)
1.	xxxxxx	xxxxxxxx
2.	All Goods	If manufactured by the following units and are for supply to the Ministry of Defence for official purposes : (i) Hindustan Aeronautics Limited. (ii) Bharat Electronics Limits (iii) Bharat Dynamics Limited (iv) National Instruments Limited, Calcutta (v) National Aerospace Laboratories (vi) Mishra Dhatu Nigam (vii) Bharat Earth Movers Limited (viii) Bharat Heavy Electricals Ltd.

9. Plain reading of the above narrated portion of the Notification would disclose that, the exemption available thereunder is if manufactured by units which were mentioned in the said column no. 3 and such goods are supplied to the Ministry of Defence for official purposes. Obviously, therefore, in order to

claim exemption under the said Notification, it is not sufficient that the goods are manufactured by the units mentioned in the said column, but such goods must be supplied to the Ministry of Defence. Mere supply of goods to the Ministry of Defence is also not sufficient, but such supply must be for official purposes. In short, there are three conditions specified in the said column. Firstly, the goods must be manufactured by the units specified. Secondly, the goods must be supplied to the Ministry of Defence. Thirdly, goods must be supplied to the Ministry of Defence for official purposes.

10. As regards the appellants' case is concerned, undisputedly, the appellants' goods were not supplied directly to the Ministry of Defence. They were supplied to one of the units mentioned in the said units' list who manufactures the goods to be supplied to the Ministry of Defence. In other words, the appellants supplied some of the inputs for the manufacture of the final goods to be supplied to the Ministry of Defence. The Notification nowhere speaks of any inputs supplied to the manufacturer of the goods which are meant for the Ministry of Defence to be entitled for exemption under the said Notification. Obviously, therefore, the appellants' goods cannot fit within the four corners of the conditions specified in order to avail the benefit under the said Notification.

11. As regards the Trade Notice is concerned, as rightly pointed out by the learned DR, the Trade Notice relates to

Notification No. 184/86. It does not relate to the Notification in question. Even assuming that the exemption granted under Notification 63/95-CE is of similar nature as was granted under Notification No. 184/86, that itself will not be a justifiable ground to extend the Trade Notice in question to the cases under Notification No. 63/95-CE. Each Notification for exemption of any tax liability or duty liability is issued with certain specific purpose. Unless the concerned Ministry or the Board comes out with necessary instructions that the Trade Notice, which is issued in relation to the exemption granted under particular provision, would also apply for some other Notification also, It would not be appropriate for the authorities acting under the said Act to enforce the duty liability arising under the said Act to extend the meaning of such Trade Notices and apply the same to a different situation arising under different Notification.

12. At this stage, the learned advocate for the appellants drew our attention to the decision of the Tribunal in the matter of **Sujan Industries vs Commissioner of Central Excise, Mumbai-IV,** reported in 2007 (220) ELT 161, therein the Tribunal had referred to two Board's Circulars, namely, Circular No. 5/92 dated 19th May, 1992 and another letter from the Ministry of Finance vide F.No. VI/16/04/03 dated 07.11.2003, had sought to extend the benefit of the Notification No. 63/95 to the appellants in the said case on the ground that there is no dispute that the goods manufactured by them had been supplied to M/s BEML who in turn had supplied to the Ministry of Defence. It was also observed that

the Circulars issued by the Board are binding on the Department as per the Apex Court decision in the case of **CCE vs Dhiren Chemical Industries,** reported in 2002 (139) ELT 3 (SC).

13. Plain reading of the decision in the matter of **Sujan Industries** (supra) would disclose that, the Tribunal did not address to the issue regarding the scope of the Notification No. 63/95. Secondly, the decision was on the ground that there was no dispute that the goods manufactured by the appellants therein were supplied to M/s BEML who in turn had supplied them to the Ministry of Defence. As already observed above, the Notification not only requires supply of goods to the Ministry of Defence, but they are to be supplied essentially for official purposes. Thirdly, the goods, so supplied, must be manufactured by M/s BEML. The exemption benefit granted under the said Notification is extended to the inputs utilized by M/s BEML or other units manufacturing the goods and supplying the same to the Ministry of Defence for official purposes. Apparently the decision is *per incuriam*.

14 As regards the observation that the Apex Court in **Dhiren Chemical Industries**' case (supra) has held that, the Circulars issued by the Board are binding on the Department, on perusal of the decision of the Apex Court in **Dhiren Chemical Industries**' case (supra), we do not find any observation by the Apex Court to the effect that the Board's Circulars issued in relation to a particular Notification would automatically apply to the circumstances arising under different Notification. Though, there

cannot be any quarrel about the proposition that the Circulars issued by the Board are binding on the authorities, the applicability of the Circulars will depend upon the Notification under which said Circulars are issued. Circular issued under a particular Notification cannot be blindly applied to the circumstances arising under different Notification. Undoubtedly, in a case where there is doubt about the entitlement to take the benefit of any particular Exemption Notification in case a Circular issued under a different Notification can be of some help, certainly it may have a persuasive value, but cannot be said to be binding on the authority.

15. As regards the letter dated 07th November, 2003 by the Commissioner to the Executive Director of M/s BEML is concerned, the same reads as under :

> **"Please refer to your representation No. CA/05/463/2003 dated 09.10.2003 to the Chief Commissioner of Central Excise and Customs, Bangalore Zone, Bangalore, on the above subject.**
>
> **Based on your letter No. MDS/121/VI/KGF/0644 dated 13.12.2002 addressed to M/s HAL and copy endorsed to this office, the Chief Commissioner of Central Excise, Bangalore Zone, Bangalore, has clarified that the benefit of Notification 63/95 will be extended to all job workers and vendors who supply inputs used in the manufacture of Finished Goods supplied to Ministry of Defence. The concerned Jurisdictional Deputy Commissioners have been instructed to extend the benefit under the Notification 63/95 to all job workers and vendors of the units supplying goods to the Ministry of Defence under the said Notification."**

16. On the face of it, letter does not refer to any Circular or instructions issued by the Board or any letter of the Ministry to the Government of India. Apparently, the extension of benefit of Notification no. 63/95 has been sought to be given to the job workers and vendors who had supplied the inputs used in the manufacture of finished goods to be supplied to the Ministry of Defence by Commissioner himself on the basis of some advice given by the Chief Commissioner of Central Excise in his letter dated 13th December, 2002. We have no advantage of perusing the said letter. Very fact that the letter in question does not refer to any Circular of the Board or instructions issued by the Board or any other authority from the Government of India, we presume that there is no such Circular or instructions or letter by the Government of India dealing with the said matter. Obviously, the Commissioner is not entitled to extend the scope of any Exemption Notification. Extending the benefit to the job workers and vendors who supplied the inputs to the manufacturer of finished goods who have to supply such goods to the Ministry of ~~Finance~~ Defence would, apparently, amount to extending the scope of the Exemption Notification No. 63/95-CE. As already seen above, it is not mere supply to the Ministry of Defence, but such supply should be for official purposes. Secondly, the exemption is available in relation to the finished goods and not in relation to the inputs supplied to the manufacturer of the finished goods.

17. For the reasons stated above, therefore, we do not find any fault with the impugned order and it does not want any interference. Hence the appeal fails and is hereby dismissed.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

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