14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. C/281 /2007 - CU[DB]

Date **12/10/2011**

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

To :
M/S BHOLANATH INDUSTRIES LTD.
G.T.ROAD, KACHHAWAN, VARANASI (U.P.)

M/S BHOLANATH INDUSTRIES LTD. Appellant

Vs

C.C.E ALLAHABAD Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/435/ 2011 CU[DB]** dated 07.10.2011 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.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.S.P. OJHA
299, BAGHAMBARI HOUSING SCHEME,
ALLAHPUR, ALLAHABAD, (UP)

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

Customs Appeal No. 281 of 2007

[Arising out of the Order-in-Appeal No. MP (Dem-72/2005) 02 of 2007 dated 19/01/2007 passed by The Commissioner, Customs & Central Excise, Allahabad.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri 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?	:
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?	:

M/s Bholanath Industries Ltd. Appellant

Versus

CCE, Allahabad Respondent

Appearance

Shri S.P. Ojha, Consultant – for the appellant.

Shri Sunil Kumar, Authorized Representative (SDR) - for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

DATE OF HEARING : 15/09/2011.
DATE OF DECISION : 15/09/2011.

Final Order No. C/435/11 Dated : 7.10.11

Per. Rakesh Kumar :-

The appellant a 100% EOU engaged in manufacture of semi-worsted woollen yarn chargeable to Central Excise Duty under heading 5106.12 of the Central Excise Tariff. They had imported inputs and capital goods without payment of duty under Notification No. 53/97-Cus. dated 3/6/97 for use in the manufacture of finished goods for export. These duty free imports had been made against procurement certificates. They had imported certain capital goods free of duty under bill of entry No. 25/99 dated 28/7/99, No. 4304 dated 18/7/2000 and 009 dated 12/10/10, which had been received in the factory on 6/8/99, 5/9/2000 and 1/1/2001 respectively and these capital goods had been taken up for manufacturing process on 18/1/01, 28/9/01 and 10/6/02 respectively. The total Customs Duty involved on these capital goods was Rs. 72,12,938/-. Department was of the view that as per the conditions of the exemption Notification No. 53/97-CUS, the capital goods imported under this Notification by 100% EOU free of duty had to be installed within a period of one year, while in this case these capital goods had not been installed within a period of one year but had been installed after the expiry of period of one year and no permission had been obtained from the Jurisdictional Assistant Commissioner for extension of the period for the purpose of installation. It is on this ground that show cause notice dated 5/7/05 was issued to the appellant for demand of duty amounting to Rs. 72,12,938/-

alongwith interest from the appellant by denying the exemption in respect of these goods and also for imposition of penalty on them under Section 112 of Customs Act, 1962. The show cause notice was adjudicated by the Commissioner vide order-in-original dated 19/1/07 by which the Commissioner holding that the conditions of the Notification No. 53/97-CUS have been violated, confirmed the duty demand of Rs. 72,12,938/- alongwith interest and also imposed penalty of Rs. 1,00,000/- on them under Section 112 of Customs Act, 1962. Against this order of the Commissioner, this appeal has been filed.

2. Heard both the sides.

2.1 Shri S.P. Ojha, Consultant, the learned Counsel for the appellant, pleaded that, it is not in dispute that the capital goods, in question, imported free of duty had been received in the factory of the appellant and had been installed and thereafter used for the intended purpose, that there was only delay beyond the stipulated period of one year, which could be condoned by the Jurisdictional Assistant Commissioner, that when the goods imported had been installed in the factory and used for intended purpose and it is not in dispute that the goods were used for manufacture of finished goods for export and the finished goods were exported, there is substantive compliance of the conditions subject to which, duty free import of the goods had been permitted, that in view of this, just because the imported capital goods were not installed within a period of one year and the delay in their installation was not condoned by the Jurisdictional Assistant/Deputy Commissioner, the duty exemption cannot be denied, that in any case, the entire demand raised vide show cause notice dated 5/7/05 is time barred, as thee was absolutely no fraud, wilful misstatement or suppression of any facts on the part of the appellant, that in view of this, the impugned order confirming the duty demand alongwith interest and imposing penalty under Section 112 (a) of Customs Act, 1962 is not correct.

2.2 Shri Sunil Kumar, the learned Senior Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner (Appeals) in it and pleaded that when one of the condition of the exemption Notification is that the imported capital goods must be installed within a period of one year of their receipt or within such extended period as is allowed by Assistant/Deputy Commissioner and when neither the capital goods were installed within the stipulated period nor the period of one year was extended by the Assistant/Deputy Commissioner, this condition of the exemption notification had been contravened and the appellant would not be eligible for exemption under Notification No. 53/97-CUS, and that in this regard he relies Hon'ble Supreme Court judgment in the case of **Eagle Flask Industries Limited vs. CCE, Pune** reported in **2004 (171) E.L.T. 296 (S.C.)**, wherein it has been held that when an exemption notification is subject to certain conditions as specified in the Notification, the conditions have to be strictly complied with for availing the benefit.

3. We have carefully considered the submissions from both the sides and perused the records.

4. The first point which we notice is that while the duty free imports availing the benefit of Notification No. 53/97-CUS had been made during the period July 1999 to October 2000, the show cause notice denying the benefit of this exemption and recovery of duty has been issued only on 05/7/05, which will survive only if the extended period under proviso to Section 28 of the Customs Act, 1962 is available to the department, but on going through the show cause notice and the impugned order-in-original, we find that there is absolutely no evidence of any wilful misstatement or suppression of facts on the part of the appellant. Moreover when the period of one year for installation of the imported capital goods could be extended by the Jurisdictional Assistant Commissioner, on request in this regard being made by the assessee, just because the assessee due to ignorance or any other reason did not made a request for extension and there is delay in installation of the capital goods, it cannot be said that there was any intention on the part of the appellant to wrongly avail of the duty exemption or that the appellant had wilfully suppressed the fact of delay in installation of capital goods with intent to evade the payment of duty. Moreover the substantive condition of the notification, in question, is that the inputs and capital goods imported must be used for manufacture of the goods for export

and the export target must be achieved. There is no allegation that the capital goods, in question, were not used for the intended purpose or that the appellant failed to achieve the export target. In view of this, we hold that the substantive condition of the exemption notification has been fulfilled by the appellant and just because of some delay in installation of capital goods, which was condonable, the benefit of duty exemption cannot be denied. In our view, the judgment of Hon'ble Supreme Court in the case of **Eagle Flask Industries Limited vs. CCE, Pune** (supra) cited by the learned DR is not applicable to the facts of this case. In view of this, we hold that the impugned order is not sustainable. The same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

PK