

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Excise Appeal No. 51488 of 2017 with
Excise CoD Application No. 50721 of 2017**

(Arising out of Order-in-Appeal No. 08(AB)CE/JPR/2017 dated 22.02.2017 passed by the Commissioner of Customs & Central Excise (Appeals), Jaipur)

DATE OF HEARING : 20.10.2017

DATE OF DECISION : 20.10.2017

M/s S. Pal Enterprises Pvt. Ltd.

Appellants

(Rep by Sh. Kumar Vikram, Adv.)

VERSUS

CCE, Alwar

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Respondent

(Rep. by Sh H.C. Saini, DR)

**CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 57340/2017

PER B. RAVICHANDRAN :

The Misc. Application is for condonation of delay in filing the appeal. The learned counsel for the assessee-Appellants submitted that there is a delay of 70 days in filing the appeal attributable to their authorised employee who received the order but proceeded on leave without taking further action or intimating higher ups of the company. The employee went on leave of about a month for his marriage. This resulted in the delay in filing the appeal. Though the reason for delay is not very convincing and

shows that the assessee-Appellants should have been more diligent in following the revenue matters, we, in the interest of justice, are inclined to allow the request for condonation of delay in filing the appeal, however, at a cost of Rs. 1,000/- which has to be deposited in the Prime Minister's Relief Fund within one week.

2. Since the issue involved is on a very short point, with the consent of both sides, the main appeal itself is taken up for hearing. At this stage, the learned counsel for the assessee-Appellants assured that the payment of cost, so imposed, will be made within the stipulated time.

3. The short issue involved in the present appeal is the denial of exemption for wires and cables cleared by the assessee-Appellants under Notification No. 108/95 dated 28.08.1995. The goods were cleared to IRPMU for use in Railway Sector Improvement Project which is funded by Asian Development Bank and assigned to Rail Vikas Nigam Limited for implementation. The Signal & Telecommunication portion of the said project is assigned to Indian Railway Project Management Unit. The Chief Project Manager of this Unit had certified the requirement of the impugned goods for implementation of the Project. It is also certified that the Chief Project Manager working in Railways is equivalent to the rank of Joint Secretary to the Government of India.

4. The Revenue entertained a view that there was no counter signature by the concerned Ministry. The proceedings initiated by the Department resulted in the confirmation of the demand amounting to Rs. 1,76,882/- with penalty of equal amount

under Rule 25 of the Central Excise Rules, 2002 read with proviso to Section 11AC of the Central Excise Act, 1944.

5. The learned counsel appearing for the assessee-Appellants submitted that, since the project is implemented by the Ministry of Railway's project office, they have cleared the goods on the strength of the certificate issued by the Chief Project Officer, who is of the rank of Joint Secretary to the Government of India in the Ministry of Railways. The clearance without payment of duty has been reflected in the monthly statutory return ER-1. The requirement of counter signature by the Ministry was examined by the audit much later. He submitted that they have acted in bonafide manner based on the certificate issued by an Officer of the Indian Railway and cannot be alleged to have acted with an intention to evade payment of duty with an element of fraud, suppression etc.

6. The learned DR for the Revenue submitted that the requirement of the Notification (supra) is very clear and various authorities are mentioned therein to certify the eligibility of the exemption. Such violation of condition will necessarily result in the demand and penal action.

7. We have heard both sides and perused the material available on record. We note that the instant case is based only on certificate issued by the Chief Project Manager of Indian Railway Project Management Unit, New Delhi. The supply of goods without payment of duty was made. The Notification stipulates that the certificate should be issued by the Project Implementation authority

and counter signed by an Officer not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry. We note that the project is for Indian Railways. The certificate is issued only by Chief of Project Manager in the Indian Railways. It is not coming out clearly in the impugned order, whether there is any other Line Ministry supervising this project which is a railway project. In any case, without further examining the merits of the case, we note that there is no sustainable ground to invoke fraud, suppression or wilful mis-statement in the facts of the present case. The clearance of goods is without payment of duty claiming Notification No. 108/95 has been reflected in the monthly statutory return and the clearance is based on the certificate issued by the Railway authorities. In such circumstances, it is not correct to invoke the extended period of demand and impose penalty. On this ground alone, the impugned order is set aside and the appeal is allowed.

8. In the result, appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT