

under challenge has rejected the said claim. Being aggrieved the appellant is before this Tribunal.

2. I have heard Mr. Nitin Mehta, Ld. Advocate for the appellant and Mr. P.R. Gupta, Ld. DR for the Department.

3. It is submitted on behalf of the appellant that the only ground as mentioned by Commissioner(Appeals) for rejecting the refund application is the failure of the appellant to furnish the required document as that of copy of certificate issued from the Executive Head of the Project Implementing Authority and counter signed by an office not below the rank of Joint Secretary to Government of India. It is submitted that alongwith the documents as were filed with the refund application, an exemption certificate was duly filed. The details thereof fulfil all the requirements as have been wrongly held to be missing by the Commissioner(Appeals). Order accordingly prayed to be set aside, Appeal is prayed to be allowed.

4. Ld. DR while justifying the impugned Order has placed emphasis upon the Notification No. 108/95 dated 28.08.1995 and also upon the various case laws of the Hon'ble Apex Court as is relied upon by the Commissioner(Appeals) to the effect that the exemption Notification has to be strictly construed. It is submitted that lack of information as is required under (ii)(c)(i) of the aforesaid Notification the Commissioner(Appeals) has been justified while rejecting the refund claim for the noticed deficiency. Appeal is accordingly prayed to be allowed.

5. After hearing both the parties and perusing the record, it is observed as follows:

Alongwith the Application praying for refund following documents were furnished by the appellant:

- (i) Copy of invoice No. 315401255 dated 31.01.2016 issued in favour of M/s IVRCL-MRT (JV), Kantabhanji
- (ii) Copy of Credit Note No. 03/15-16 dated 31.01.2016 issued by us towards the reversal of Excess duty Rs. 3,79,313/-
- (iii) Exemption Certificate
- (iv) Customer Confirmation Letter

One of such document is an exemption certificate. The perusal thereof shows that this document contains a letter dated 24.04.2015 as was submitted by the appellant to the Superintendent Central Excise Range, Pithampur submitting the original copy of certificate issued by the competent authority certifying exemption from excise duty as per the Government Notification No. 108/95/CE dated 28.08.1995. The said application was submitted at the time of clearance of goods by the appellant. The certificate as mentioned therein is also the part of the said application as was furnished to the Adjudicating Authorities below in the form of exemption certificate.

Now, the narrow compass of the adjudication is as to whether this exemption certificate provides all the details as are required to be furnished by the appellant to seek the benefit of exemption Notification No. 108/95 dated 20.08.1995 same, the relevant portion thereof has been referred by Commissioner (Appeals) in para 7.1 of the Order under challenge. Same is not reproduced here for the sake of brevity. However, from the said para itself the following conditions as are required to be fulfilled by the appellant for seeking benefit of the said exemption and the respective details from the exemption certificate as provided by the appellant are as follows:

S. No.	Condition in Para 1(c) (i) of Notification No. 108/95-CE	Compliance in Project Authority Certificate [PAC] dated 17.03.2015, issued by Rail Vikas Nigam Ltd.
1.	Goods are supplied to a Project financed by ADB or any international organisation	Goods were supplied to the Project of doubling of Raipur-Titagarh rail line in East Coastal Railway, which is financed by the Asian Development Bank (ADB)
2.	Project is approved by the Govt. of India	PAC has certified that the project is approved by the Govt. of India
3.	PAC is issued by executive head of Project Implementing Authority	PAC has been issued by Chief Project Manager, jointly with Group General Manager of RVNL
4.	PAC is countersigned by an officer not below the rank of a Joint Secretary, Govt. of India, in the concerned Line Ministry	PAC has been signed by Chief Engineer/ Con-II, East Coast Railway, equivalent of Joint Secretary of Ministry of Railways, Govt. of India
5.	Goods are certified to be required by the approved Project	In the PAC it is categorically certified that the goods were required for the approved project of doubling of doubling of Raipur-Titagarh rail line in East Coastal Railway, financed by the Asian Development Bank [ADB]

The perusal of above table clarifies that the exemption certificate as furnished by the appellant was providing and was fulfilling all the conditions as are required to be fulfilled for seeking the benefit. The certificate has been signed by Executive Chief Project Implementing Authority/ Chief Project Manager. It has been clarified in the certificate itself that his post is equivalent to Joint Secretary in Government of India in Ministry of Railways. Commissioner(Appeals) has miserably been silent about acknowledging all the details furnished to him vide the exemption certificate rather has opted to be silent for the same. The mere emphasis upon the Notification without acknowledging the complete compliance thereof on the part of the appellant is opined unappreciable on the part of the adjudicating authority. The order resultantly is hereby set aside and Appeal stands allowed.

[Dictated and pronounced in the open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

D.J.