# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## REGIONAL BENCH AT HYDERABAD
Division Bench

Court – I

**APPEAL No. E/369/2008**

(Arising out of Order-in-Original No. 18/2007-CE, dated 20.12.2007 passed by CCCE, Hyderabad-IV Commissionerate)

CCCE, Hyderabad-IV .. APPELLANT

Vs.

ELICO LIMITED .. RESPONDENT

Appearance

Smt. B.V. Siva Naga Kumari, Commissioner/AR for the Appellant.

Shri R. Muralidhar, Advocate for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 24.09.2018

Date of Decision: 23.10.2018

**FINAL ORDER No. A/31338/2018**

[Order per: Mr. P.V. Subba Rao]

1. This appeal is preferred by Revenue against Order-in-Original No. 18/2007-CE, dated 20.12.2007. The facts of the case, after filtering out unnecessary details are that the respondents herein are manufacturers of testing equipments like Digital PH Meters, Flame Photometer etc. falling

under CET 9027.00. They cleared the goods without payment of Excise Duty claiming exemption under notification No. 10/97-CE, dated 01.03.1997. After getting the details of invoices and other documents from the respondent, a show cause notice dated 05.12.2016 was issued to the respondent herein, invoking the extended period, seeking to deny the benefit of exemption notification No. 10/97-CE, dated 01.03.1997 on the following grounds:

| S.No. | | | | **Demand dropped/confirmed by Adjudicating authority vide OIO No. 18/2007, dt. 20.12.2007.** | | | **Final Order No. A/3110/ 2018, dt. 24.1.2018** |
|---|---|---|---|---|---|---|---|
| | **Allegation in the SCN** | **SCN Annexure** | **Demand** | **On merits** | **On limitation** | **Confirmed demand** | **Amount set aside by Tribunal** |
| 1. | Essentiality Certificate issued by incompetent authorities | B | 1136721 | 0 | 1130036 | 6685 | 6685 |
| 2. | Essentiality certificate not issued by Registrar | C | 4564303 | 4564303 | | | |
| 3. | Clearances made for non-research or dual purpose | D | 1930398 | 1930398 | | | |
| 4. | Purpose not mentioned in the certificate | E | 292454 | 292454 | | | |
| 5. | Clearances made without Essentiality Certificate | F | 134231 | | | 117835 | 117835 |
| 6. | No evidence that the institutions are registered with DSIR | G | 320039 | 320039 | | | |
| | | | **8378146** | **7107194** | | | |
| | Demand as per SCN | | **7414342** | | | | |
| | **Demand as per Annexure 'A' of the SCN** | | **7414342** | | | | |

2. After following due process, the original authority has dropped demands partly on merits and partly on limitation and confirmed the

demands only in respect of S.No. 1 to 5 above. In respect of the demands which were confirmed by the original authority, the assessee filed an appeal which was disposed of vide Final Order No. A/30110/2018, dated 24.01.2018 setting aside the demands. The present appeal is from Revenue with respect to the demands which were dropped by the original authority.

3. Ld. Commissioner/AR submits that exemption notification is an exception to the general Rule and should be strictly construed against the person claiming the benefit of the same. This law has been finally settled by the Constitutional Bench of Supreme Court in Civil Appeal no. 3327/2007, Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Company and others. She rightly points out that there were different views regarding the entitlement of the benefit of exemption notification and the differences have now been settled by the law laid down by the five member Constitutional Bench in the case of Dilip Kumar & Company (supra). It is her contention that the original authority has wrongly allowed the benefit of exemption notification when the conditions were not strictly fulfilled by the respondent.

4. Ld. Counsel for the respondent takes us to the facts of the case and submits that this Bench has already held in their favor in respect of the demands confirmed by the original authority, in the final order No. A/30110/2018, dated 24.01.2018. Therefore, this appeal by the Revenue in

respect of the remaining demands which were dropped by the original authority also needs to be rejected.

5. We find that the final order No. A/30110/2018, dated 24.01.2018, passed by this Bench has decided two of the six issues in the show cause notice as follows:

a) Essentiality certificate issued by incompetent authorities.
b) Clearances made without Essentiality Certificate.

6. Insofar as these two issues are concerned, the order of this Bench does not appear to have been appealed and hence the issue has reached finality. We now proceed to examine the remaining four issues which are as follows:

i) Essentiality Certificate not issued by Registrar.
ii) Clearances made for non-research of dual purpose.
iii) Purpose not mentioned in the certificate.
iv) No evidence that the Institutions are registered with DSIR.

7. In respect of the clearances where the Essentiality Certificate was not issued by Registrar, the original authority has observed that notification does not specify the private colleges as a specified institution for making clearance under this notification. However, the explanation to the notification clarifies that 'University' includes college maintained or affiliated

to a university. He further observes that explanation clarifies that head of university means 'the Registrar' and for colleges he held that competent person to issue the certificate as per the notification was the Principal of the college. He further admits that the colleges in question were registered with DSIR as required under the notification but dropped their demand on this count.

8. With respect to the clearances made for non-research or dual purpose, he observed that in the certificate the purpose was mentioned as for "Laboratory purposes, Research & Lab purposes or for conducting practical classes and research in the Institute" and held that such certificates are, in his opinion, not invalid as per the notification.

9. Purposes not mentioned in the Certificate in respect of these cases, he admits that certificates do not bear explicit purpose for the goods but allowed the exemption on the ground that the certificate refers to notification No. 10/97, dated 01.03.1997.

10. In respect of the cases where there was no evidence that the Institution was registered with DSIR, he allowed the benefit of the notification even though there was no certificate of registration on the ground that the procurement order mentions the registration number.

11. We, therefore, find that the original authority has taken a broader view of the intent of the exemption notification No. 10/97 and allowed the benefit of notification while admitting that some documents as required under notification such as Registration Certificate of DSIR or the specific purpose for which equipment is supposed to be used were missing.

12. During the arguments, Ld. Counsel for the respondent submitted copies of sample certificates which they had produced before the original authority. He also gives us a detailed list of the clearances made by them during the period claiming the benefit of exemption notification No. 10/97. On perusal of the same, prima-facie, we find that in view of the law laid down by Hon'ble Apex Court in the case of Dilip Kumar & Company (supra), the entitlement of the exemption notification has to be examined and strictly consider with reference to each of the clearances which requires detailed examination of the documents. We, therefore, find that this is a fit case to be remitted back to the original authority for re-examination in the light of the laws laid down by Hon'ble Apex Court in the case of Dilip Kumar & Company and Others (supra). As far as the demands in respect of the cases where the essentiality certificate issued by incompetent authorities or clearances made without essentiality certificate are concerned, this Bench in the final order No. A/30110/2018, dated 24.01.2018, has brought these issues to a conclusion and there is nothing on record that this order is appealed against.

13. In view of the foregoing, the matter is remitted back to the original authority to examine the documents and decide the demand on merits and limitation, except the two issues already decided by this Bench in the final order No. A/30110/2018, dated 24.01.2018.

14. Appeal is disposed of as indicated herein above.

*(Pronounced in open Court on 23.10.2018)*

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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