IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO. I

Appeal No. C/1201/08

(Arising out of Order-in-Original No. 157/08-09 dated 13.08.2008 passed by the Commissioner of Customs (Import), Nhava Sheva).

M/s Chaitanya Bharathi Educational Society	Appellant

Vs.

Commissioner of Customs (Import), Nhava Sheva	Respondent

Appearance:

Shri Bharat Raichandani, Advocate	for Appellant

Shri K.M. D'Souza, Asstt. Commissioner (AR)	for Respondent

CORAM:

HON'BLE MRS. ARCHANA WADHWA, MMBER (JUDICIAL)
HON'BLE SHRI RAJU, MEMBERE (TECHNICAL)

Date of Hearing: 06.03.2018

Date of Decision: 06.03.2018

ORDER NO. **A/ 85642/2018**

Per: Archana Wadhwa

After hearing both sides duly represented by Shri Bharat Raichandani, learned Advocate for the appellant and Shri K.M. D'Souza, Assistant Commissioner (AR) for the Revenue, we find that the appellant M/s Chaitanya Bharathi Educational Society are running two Engineering Colleges in Andhra Pradesh by the name of M/s Chaitanya Bharathi Institution of Technology (hereinafter referred to as CBIT) and Mahatma Gandhi Institution of Technology (hereinafter referred to as MGIT), whereas CBIT is affiliated to Osmania University and MGIT is affiliated to Jawaharlal Nehru Technical University.

2. Vide Notification No. 51/96-Cus dated 23.7.1996, the goods imported by an Institution for the development and research activity are exempted from the payment of duty subject to fulfillment of certain conditions. One of the conditions of the said notification is Procurement of Essentiality Certificate from the concerned University, to which such colleges are attached to.

3. The appellant claimed the benefit of the said notification in respect of the goods imported by them for further research purposes and also produced the essentiality certificate from the University of Osmania. However, it is seen that subsequently the said certificate was withdrawn by the Osmania University, on the basis of which the proceedings were initiated against the appellant for denial of the exemption. The adjudicating authority while denying the exemption observed that the issue of Essentiality Certificate, even though not obtained by submission of wrong facts or suppression of facts was admittedly the mistake on the part of the parent University and consequence of the same would result in denial of the benefit of the notification. He accordingly observed that once the essentiality certificate was withdrawn, the goods have not been used for research purposes. He, accordingly, confirmed the demand and also imposed penalties.

Hence, the present appeal.

4. It is also seen that the other colleges of the same society being MGIT affiliated to Jawaharlal Nehru Technical University also faced the same problem, inasmuch as the essentiality certificate issued by the University to which such college was affiliated to was also withdrawn. Identical proceedings were initiated against them resulting in denial of the exemption. The matter was taken before the Tribunal and vide their Final Order reported as 2005 (186) ELT 52 (Tri), the appeal was allowed. It stands held by the Tribunal that inasmuch as the essentiality certificate stand issued to the college without their being any suppresion on the part of the assessee and such University being registered under the Department of Scientific and Industrial Research, the subsequent withdrawal of the essentiality certificate would not result in denial of the exemption benefit to the appellant. As per the appellant, the said decision stand accepted by the Revenue and as a consequence, refund has also been granted to them.

5. Inasmuch as the MGIT is another college of the present society and the issue involved in the same is identical to the issue involved in the present appellant's case, we by following the same, set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Operative portion of the order pronounced in Court)

(Raju)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Sinha