IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. C/657/2011

(Arising out Order-in-Original no. S/3-Gen-521/11 Gr.IIA/ACC dated 07.07.2011 passed by the Commissioner of Customs, Air Cargo Complex, Mumbai)

For approval and signature:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. Evotec (India) Pvt Ltd — Appellant

Vs.

Commissioner of Customs (Import & ACC), Mumbai — Respondent

Appearance:

Shri N.S. Patel, Advocate for the appellant
Shri Bhushan Kamble, AC (AR) for the respondent

CORAM:
Hon'ble Mr C J Mathew, Member (Technical)
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 06-02-2019

Date of decision : 06-02-2019

O R D E R No: **A/85260 / 2019**

Per: C J Mathew

This appeal lies against order-in-original no. S/3-Gen-521/11 Gr.IIA/ACC dated 7th July 2011 of Commissioner of Customs, Air Cargo Complex, Mumbai which has confiscated '2-999S.E)-1-lodo-5-phenylpent-1-en-3-yi)oxy) tetrahydro-2h-pyran', valued at ₹1,08,19,524/- under section 111(m) to be redeemed on payment of fine of ₹5000/-, and imposed penalty of ₹500/- under section 112(a). The principal cavil of the appellant is denial of the benefit of notification no. 158/95-Cus dated 14th November 1995.

2. We have heard the Learned Counsel for the appellant and Learned Authorised Representative at length.

3. The goods that had been exported were claimed to have been returned to the appellant for purification and had sought the benefit of notification no. 158/95-Cus exempting duties on re-import which, under section 20 of Customs Act, 1962, was otherwise to be accorded the same treatment as goods sourced from outside the country. It would appear that samples had been drawn and that it was the erroneous recording of the item code as batch number on the packages discredited the claim of the appellant that the goods had originated in India. It is the contention of the Learned Counsel that they are in a

position to produce the evidence of the identity of the goods before the lower authorities.

4. The appellant is a '100% export oriented unit.' Goods imported by such units are entitled to clearance without payment of duty subject to fulfilment of export obligation and in the event of clearance to the domestic market, are liable to duties of central excise which are an aggregate of the duties of customs. The duties applicable to such goods that have been denied the benefit of exemption notification, if not exported, would be eventually recovered at some point in time. Hence, the interest of Revenue are not jeopardized by allowing the clearance against the exemption notification which is the apprehension of Learned Authorised Representative.

5. However, in view of the submission made on behalf of appellant, we direct that the matter be decided afresh on the basis of further submissions and evidence produced before the original authority. Accordingly, we set aside the impugned order and remand the matter back to original authority.

(Operative part pronounced in Court)

(Dr. Suvendu Kumar Pati)	**(C J Mathew)**
Member (Judicial)	**Member (Technical)**

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