CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85939 of 2013

(Arising out of Order-in-Original No. Belapur/54/Bel-I/R-II/COMMR/KA/12-13 dated 26.11.2013 passed by the Commissioner of Central Excise, Belapur)

M/s. Hindustan Colas Ltd. **Appellant**
Plot No. D-500, TTC Industrial Area,
MIDC Turbhe, Navi Mumbai 400 703.

Vs.

Commissioner of CGST & CE, Belapur **Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Rajesh Ostwal with Shri Saurabh Bhise, Advocates, for the Appellant
Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing: 14.03.2023
Date of Decision: 14.03.2023

FINAL ORDER NO. 85488/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Original No. Belapur/54/Bel-I/R-II/COMMR/KA/12-13 dated 26.11.2013 passed by the Commissioner of Central Excise, Belapur. By the impugned order, following has been held:-

"ORDER

1. I confirm the demand of Rs.1,02,22,129/- (One Crore Two Lakh Twenty Two Thousand One Hundred Twenty Nine) under proviso to Section 11 A/ sub- section (5) of Section 11A of the Central Excise Act, 1944. 1 drop the remaining part of duty demanded in the Show Cause Notice.

2. I hold that the assessee is liable to pay interest on the demand confirmed under Section 11AA/11AB of the Central Excise Act, 1944.

3. I impose penalty of Rs.1,02,22,129/- (One Crore Two Lakh Twenty Two Thousand One Hundred Twenty Nine) under Section 11AC of the Central Excised Act, 1944. However, the Penalty will be reduced to 25% of the above amount if the assessee pays the duty determined along with interest within 30 days of receipt of this order. The reduced penalty 25% of the amount of duty so determined is available to the assessee only if the 25% of the penalty is also paid within the period of thirty days of receipt of this order. Otherwise the penalty imposed under Section 11AC, equal to the duty amount will remain."

2.1 Appellant during the period from 01.07.2006 to 30.06.2011 had cleared goods by availing exemption Notification No. 108/95-CE dated 28.08.1995 from time to time. On scrutiny of the records of the appellant, it was observed that the appellant was not directly selling the goods to Project Implementation Authority but clearing to the contractor or sub-contractor of PIA. In terms of the said notification, contractor or sub-contractor were not eligible to procure goods duty free. It was further observed that they had cleared goods on the strength of the certificates as required by the notification but the validity of the said certificates was extended on the basis of the letter issued by the PIA which was not countersigned as per the requirement of the notification. Show cause notice dated 09.08.2011 was issued to the appellant asking them to show cause as to why:-

"a) central excise duty including education Cess and higher secondary education Cess amounting to Rs.4,06,35,151/- (Rupees Four Crores Six Lakhs Thirty Five Thousand One Hundred Fifty One only) calculated in Annexure C read with Annexure A-1 to A-6, and inclusive of duty of Rs.1,02,22,129/- (One Crores Two Lakhs Twenty Two Thousand One Hundred Twenty Nine) on the clearances mentioned in Annexure B, should not be demanded and recovered from them on the

aforesaid clearances of their goods cleared under Notification No.108/95- CE. dated 28.08.1995 as amended, from 1st July, 2006 to 30th June, 2011 under proviso to Section 11 A/ sub-section (5) of Section 11A, (w.e.f 08.04.2011) of the Central Excise Act;

b) penalty under Section 11 AC for the period 01.07.2006 to 07.04.2011 and under sub-section (5) of Section 11 AC w.e.f 08.04.2011, should not be imposed on them;

c) interest as applicable should not be demanded and recovered from them under the provisions of the erstwhile Section 11AB/ 11 AA, of the Central Excise Act, 1944."

2.2 This show cause notice has been adjudicated as per the impugned order. Aggrieved appellant has filed this appeal.

3.1 We have heard Shri Rajesh Ostwal, Advocate for the appellant and Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:-

- Undisputedly the goods have been supplied to various projects funded by international organizations and the Commissioner has himself held so in para 31 of the impugned order. Having held so, the Commissioner could not have proceeded to demand denying the benefit of exemption notification on technical grounds.
- The issue is squarely covered by the decision of the Tribunal in the case of Auro Laboratories [2016 (344) ELT 391 (T)].
- It is settled position in law that the exemption notifications should be interpreted strictly and interpretation as per the language of the notification should be adopted as has been held in following decisions:
  - Uttam Industries [2011 (265) ELT 14 (SC)]
  - M. Ambalal & Co. [2010 (260) ELT 487 (SC)]
- Extended period of limitation cannot be invoked since there is no suppression of facts.

3.3 Learned AR reiterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Following findings have been recorded in the impugned order:-

"24. I have gone through the facts of the case, submissions made by the assessee in their written reply and at the time of personal hearing.

The facts of the case in brief are that, the assessee manufactured and supplied Bitumen Emulsion and Modified Bitumen for the Road Construction Projects of many states such as Madhya Pradesh, Chhattisgarh and Rajasthan. They have availed the benefit of exemption Notification No. 108/95 -CE dated 28.8.95. As per the notification cited above, full exemption is provided to goods supplied to the projects funded by UN or projects funded by specified International Organizations. In the SCN, it is alleged that the exemption is applicable only when the goods are supplied directly to the Project Implementation Authority and the exemption is not available when the goods are supplied directly to the Contractors executing the projects. It is also alleged that the certificates issued by the Project Authority have not been countersigned by the Principal Secretary to the Government and hence, the certificates produced were not in order. Accordingly, the SCN proposed to demand duty on the goods supplied by the assessee by availing the exemption notification No. 108/95 dated 28.08.95.

25. In their reply, the assessee stated that, the projects have been approved by the Government of India and the goods supplied by them were actually used in the projects. The certificates issued by the Project Authority clearly certifies that the said goods supplied to the assessee were intended for use in the project. Further, the certificates issued are countersigned by the Principal Secretary of the State Governments concerned with the projects. Hence, they argued that the certificates were valid

and they were entitled to avail the exemption provided under Notification No. 108/95 dated 28.08.95.

26. I find that notification No. 108/95 dtd 28.08.95 exempts goods cleared to projects funded by UN or specified International Organizations. The conditions for availing the exemption, provided in the said notification is that, the assessee should produce a certificate from the Project Implementing Authority certifying that the goods are required for the projects funded by such International Organizations. In this case the Road Development Projects have been approved by the Government of India for implementation by the concerned State Governments, viz. Madhya Pradesh, Chhattisgarh and Rajasthan. I find that there is no dispute on this fact about the project being approved by the Government of India. To avail the benefit of notification No. 108/95, the clearances effected by the assessee should fall within the ambit of any one of the specific categories mentioned in the Notification. I find that, the case of the assessee falls under Sr.No. c(ii) of the Notification No. 108/95. For the sake of reference, the relevant part of the Notification is reproduced below.

"c(ii) if the said project has been approved by the Government of India for implementation by the Government of a State or a Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by the Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or the Union Territory, that the said goods are required for the execution of the said project, and the said project has duly been approved by the Government of India for implementation by the concerned State Government."

27. In this case, the assessee supplied Bitumen Emulsion to the projects implemented by Madhya Pradesh Road Development Corporation and Modified Bitumen to the Road Development project of Rajasthan. Similarly they have supplied the Bitumen and Bitumen Emulsion etc. to Chhattisgarh Government Projects. The certificates issued by the Project Development Authorities of

the respective states clearly certify that the goods supplied by the assessee will be used for the intended purpose i.e. the project financed by the Asian Development Bank or the specified International Organisation. The certificates are countersigned by the Principal Secretary of Public Works Department of the State of Madhya Pradesh, Chhattisgarh and Rajasthan, who are the implementing authorities of the said projects. Hence, I find that the goods supplied by the assessee clearly falls within Sr. No. c(ii) of the Notification No. 108/05 dated 28.08.95. Accordingly, I hold that, the assessee is entitled for the benefit of Notification No. 108/95 for the goods cleared for the road projects.

In support of their case, the assessee relied upon the decisions of various Tribunals: 1 find that the decisions of the Hon'ble Tribunal cited by them supports the case of the assessee. For reference, I reproduce the relevant portion of the decisions of the Hon'ble Tribunal in the case of M/s. Caterpillar India Pvt. Ltd v. CCR- 2005(185)ELT 430(T) wherein, the Hon'ble tribunal has hell as under:

3. It is not the case of the Department that the goods have not been supplied to the Projects financed by the International Organisations. The goods were supplied to various sub contractors for the Golden Quadrilateral Project financed by Asian Development Bank. Goods have also been used for the project. The notification nowhere stipulates that the excisable goods supplied should be directly paid for by the organization financing the project. Since the goods have admittedly been used for the project, the question of misuse of goods for unintended purposes, as noted by the Commissioner, does not arise. The fact that after the projects are implemented, the sub-contractors are entitled to retain the goods supplied to them under the notification cannot result in denial of benefit of exemption under the notification to the appellants. We are supported in our view by the Larger Bench decision of the Tribunal in Toyo Engineering India Pvt. Ltd. CCE, Mumbai - 2000/122)ELT 315 in which it has been held that the mere fact that the construction machinery used in the initial setting up of the specified plant could possibly be used subsequently

elsewhere in the setting up of another plant will not debar the importer from the facility of project import. There is also no evidence in the present case that the goods in question were used in any other project after the implementation of the Golden Quadrilateral Project. There is also no requirement under the notification that the entire cost shall be borne by the International Organization, as held by the Tribunal in Nestor Pharmaceuticals Ltd. V. CCE Delhi-20009116)ELT 477.

4. In the light of the above, we hold that the benefit of exemption in Notification No. 108/95-CE is admissible to the goods cleared by the appellants herein, set aside the duty demand and penalty and allow the appeal."

28. I also find that in assessee's own case, Hon'ble Ahmedabad Tribunal has allowed the benefit of Notification No. 108/95-CE dated 28.08.95. The relevant portion of the decision is reproduced below:

Hindustan Colas Ltd vs. Commissioner- 2007(219)ELT 430(Tribunal-Ahmd.)

"We have carefully considered the rival submission. The followings are not in dispute: The project is funded by the World Bank, the projects are divided into various contract for different types of work and assigned to different contractors; the project implementing authority has been approved by the World Bank and by the Govt. of India: the goods cleared by the appellants have been used for the project. The notification, no doubt, envisages production of the certificate from the project implementing authority and the purpose of the certificate is only to ensure that the material procured duty free are required and used for the said project. It should be understood that the appellants may supply goods not only for the project, which is eligible for exemption but also to others who are not availing the said exemption. There s no rational to issue the certificate in the name of the supplier. Basically, the Notification is a kind of end-use notification and that is meant for use in the work funded by the World Bank. There is also no stipulation in the notifications

that the certificate by the project implementing authority should be in the names of suppliers of the materials."

29. The assessee have also cited Board Circular F.No.101/7/2008-CX-3 dated 12.6.2008 wherein certain clarifications have been issued regarding the availability of the benefit of Notification 108/95-CE dated 28.08.95, to capital goods. The relevant portion of the clarification is reproduced below:

"Therefore, it is clarified that the exemption is meant only for the goods which become part of the project on permanent basis and not for the goods which are used by the contractors for execution of the project and after completion of the project, the goods remain with the contractors being owners of such goods for further deployment in other projects".

I find that the decisions of the Hon'ble Tribunal cited above supports the case of the assessee. I also find that as per the clarification of Board cited above the benefit of the Notification 108/95 would be available to the inputs which became part of the project. Only the capital goods which can be used further after completion of the project would not be entitled for the benefit under the said Notification. As the goods supplied by the assessee are "inputs" which has been used in the projects funded by the specified International Organisations as mentioned in the Notification 108/95 dated 28.08.95, the benefit of notification would be available to the assessee, as per the Board Circular.

30. In the BCN, some Tribunal decisions have been cited in support of the claim that the goods directly supplied to the contractor are not eligible for the benefit of Notification 108/95 dated 28.08.95. In the reply the assessee stated that the goods involved in the said decisions are Capital goods whereas the goods involved in the present case are inputs and consumed in the intended projects and hence the decisions are not applicable in their case. I have gone through the decisions cited in the SCN. In the case of Dee Development Engineers Ltd. the goods

involved are Steam Generators and its accessories and in the case of Bird Machines the goods involved are Cranes. In the case of Action Construction Equipment Ltd. the goods involved is not specifically mentioned in the order. Hence, I agree with the claim of the assessee that the case laws cited are not relevant to their case.

In view of the discussions and the decisions cited above, I find that the assessee has fulfilled the conditions of the notification No. 108/95 and hence they are eligible for the benefit of exemption provided in the said Notification.

31. To summarise the above findings, it is observed that there is no dispute in this case that the projects have been funded by the World Bank or other specified International Organizations. Their Project Implementation Authorities have certified that the goods procured without payment of duty are required for the project. The goods supplied by the assessee to the Contractors have actually been used for the said projects. There is no dispute on these facts. I also find that the Notification No. 108/95 does not stipulate that the goods have to be supplied only to the Project Implementing Authority directly to avail the exemption. The Tribunal decisions and Board Circular cited above also supports their view. As long as the goods are used in the said project the benefit of the notification will be available to the assessee even if the goods are supplied to the contractors directly who in turn use it in the project. As the usage of the goods in the project is not disputed, I hold that the assessee is eligible for the benefit of notification No. 108/95 dated 28.08.95.

32. The next point raised in the SCN is that the extension of the validity period of the certificate issued in the case of projects implemented by the Chattishgarh Government. It is alleged that the extension validity certificates has been countersigned by the Project Director and not by the Principal Secretary and hence the extension granted was not valid. I find that this issue pertains only to the projects implemented by the Chattishgarh Government, wherein the Project Director has extended the validity. In their reply, the assessee stated that the Project

Director has been authorised for issuing the extension certificates by the concerned State Governments and hence the extension granted by the Project Director is valid. At the time of personal hearing they were asked to produce the copies of relevant authorization given by the Chhattishgarh State Government to the Project Director for countersigning the extension. Accordingly they have produced a letter dated 4.11.2011 issued by Chhattisgarh Government the contents of which are reproduced below:

"According to the proposal brought by the Note, the Project Director is authorized to dispose all the duties as mentioned in the agreement of ADB's loan no.-1 and alongwith this on the basis of the Project's construction works reviewed administrative acceptance, it is hereby directed to issue a revised technical acceptance."

I find that as per the certificate dated 4.11.2011; the Project Director has been authorized by the Chhattishgarh Government to dispose all the duties mentioned in the agreement of Asian Development Bank's loan no. 1, which includes issuance of a revised technical acceptance on the basis of Project's construction works revised administrative acceptance. From the above certificate it appears that the Project Director has been authorized by the Chhattishgarh Government to dispose all the duties as per the loan agreement entered by the Chhattishgarh Government with the Asian Development Bank, including issuance of a revised technical acceptance on the basis of Project's construction works reviewed administrative acceptance. The said certificate was issued by the Chhattishgarh Government on a proposal brought by a note, specifically in relation to the duties as mentioned in the loan agreement relating to the project work. It is not related with the executive duties of the Principal Secretary or the Secretary (Finance) of the State. There is no specific authorization to the Project Director to extend the validity of the Certificates which was issued by the Principal Secretary earlier. Hence, it can be construed that the extension granted by the Project Director in extending the validity is not in conformity with the condition c(ii) of the Notification No.108/95-

CE dated 28.08.1995 as amended. I, therefore find that in respect of the goods cleared by the assessee on the strength of the certificates (mentioned in Annexure B valued at Rs.7,08,52,170.00 involving duty of Rs. 1,02,22,129.00), whose validity has been extended by the Project Director, and such extension was not countersigned by the Principal Secretary or the Secretary (Finance) of the Chhattisgarh Government, have contravened of the provisions of the Central Excise Act, 1944, the Central Excise Rules, 2002 and Notification No.108/95-CE dated 28.08.1995 as amended. In order to avail the benefit of Notification No. 108/95, a valid certificate issued by the competent authority specified in the notification is must. This condition can not be deviated. In respect of these clearances listed in Annexure-B to the SCN, there was no valid certificate issued by the competent authority specified available at the time of clearance. The extension granted by the Project Director cannot be considered as validating the certificate issued earlier by the Principal Secretary of the state Government or Secretary (Finance). The evidence produced by the assessee vide letter dated 04.11.11, has not specifically authorized the Project Director to extend the validity of the certificate earlier issued by the competent authority. Further, I find that the authorisation submitted by the assessee was a letter dated 04.11.2011 whereas the clearances were effected during the period from 20.04.0007 to 31.01.2011. Hence, the authorisation dated 04.11.2011 can not be made applicable retrospectively for the period in which the goods were cleared based on the validity extended by the Project Director. Thus, I find that during the period from 20.04.0007 to 31.01.2011, the extension of validity of certificates issued by the Project Director was without authorization. Hence, I hold that the certificates whose validity has been extended by the Project Director are not valid documents to clear the goods under Notification 108/95 without payment of duty and uphold the demand made in this regard."

4.3 The only issue that has been raised for denial of the benefit of exemption is that the certificate extending the validity of the certificate as described by the notification has not been signed by the two officers as per the notification, but only signed

by the project director. Commissioner has in para 31 of the impugned order referred above specifically held that the benefit of exemption as per the certificate issued cannot be denied. On perusal of the notification, we find that the benefit of exemption is admissible subject to the following conditions:-

"(b) in case the said goods are –

(i) supplied to an international organisation listed in the Annexure appended to this notification for use in a project that has been approved by the Government of India and financed (whether by a loan or a grant) by such an organisation, a certificate from such an organisation that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India; or

(ii) supplied to a project that has been approved by the Government of India and financed (whether by a loan or a grant) by an international organisation listed in the said Annexure, a certificate from an officer not below the rank of Deputy Secretary to the Government of India, in the Ministry of Finance (Department of Economic Affairs) that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India";

(c) in case the said goods are intended to be supplied to a project financed (whether by a loan or a grant) by the World Bank, the Asian Development Bank or any other international organisation, and

(i) if the said project has been approved by the Government of India, a certificate from the executive head of the Project Implementing Authority and countersigned by an officer not below the rank of a Joint Secretary to the Government of India, in the concerned Line Ministry in the Government of India, that the said goods are required for the execution of the said project and that the said project has duly been approved by the Government of India, and

(ii) if the said project has been approved by the Government of India for implementation by the Government of a State or a

Union Territory, a certificate from the executive head of the Project Implementing Authority and countersigned by the Principal Secretary or the Secretary (Finance), as the case may be, in the concerned State Government or the Union Territory, that the said goods are required for the execution of the said project, and that the said project has duly been approved by the Government of India for implementation by the concerned State Government.";

(ii) for the Explanation, the following shall be substituted, namely :-

'Explanation. 1 - For the purposes of this notification,-

(a) "international organisation" means an international organisation to which the Central Government has declared, in pursuance of section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), that the provisions of the Schedule to the said Act shall apply;

(b) "Line Ministry" means a Ministry in the Government of India, which has been so nominated with respect to a project, by the Government of India, in the Ministry of Finance (Department of Economic Affairs).

Explanation 2. – For the removal of doubts, it is hereby clarified that the benefit under this notification, in the case of the goods brought into the project are not withdrawn by the supplier or contractor and the expression "goods are required for the execution of the project" shall be construed accordingly."

4.4 On perusal of the above, we do not find anything in the notification which requires the extension of the original certificate issued as per the condition b(ii) above. It is also not in dispute that the goods have been used in the manner as prescribed. By bringing in condition of extension of the said certificate, Commissioner has sought to insert certain conditions in the notification which do not exist. It is settled position in law that exemption notification needs to be interpreted according to the terms of the notification without any addition or deletion in the same.

4.5 We make reliance on the decision of Hon'ble Apex Court in the following cases:-

i) Uttam Industries [2011 (265) ELT 14 (SC)] wherein it has been held as under:-

*"**10.** It is by now a settled law that the exemption notification has to be construed strictly and there has to be strict interpretation of the same by reading the same literally. In this connection reference can be made to the decision of this Court in Collector of Customs (Preventive), Amritsar v. Malwa Industries Limited reported at (2009) 12 SCC 735 = 2009 (235) E.L.T. 214 (S.C.) as also to the decision in Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi reported at (2006) 4 SCC 772 = 2006 (197) E.L.T. 151 (S.C.) = 2008 (9) S.T.R. 307 (S.C.) wherein also it was held by this Court that finding recorded by the Tribunal and the two authorities below are findings of fact and such findings in absence of evidence on record to the contrary is not subject to interference. In order to get benefit of such notification granting exemption the claimant has to show that he satisfies the eligibility criteria. Since the Tribunal and the authorities below have categorically held that the appellant does not satisfy the eligibility criteria on the basis of the evidence on record, therefore, we hold that the said exemption Notification is not applicable to the case of the appellants."*

ii) M. Ambalal & Co. [2010 (260) ELT 487 (SC)] wherein the following has been held:-

*"**10.** It is settled law that the notification has to be read as a whole. If any of the conditions laid down in the notification is not fulfilled, the party is not entitled to the benefit of that notification. The rule regarding exemptions is that exemptions should generally be strictly interpreted but beneficial exemptions having their purpose as encouragement or promotion of certain activities should be liberally interpreted. This composite rule is not stated in any particular judgment in so many words. In fact, majority of judgements emphasize that exemptions are to be strictly interpreted while some of them insist that exemptions in*

fiscal Statutes are to be liberally interpreted giving an apparent impression that they are contradictory to each other. But this is only apparent. A close scrutiny will reveal that there is no real contradiction amongst the judgements at all. The synthesis of the views is quite clearly that the general rule is strict interpretation while special rule in the case of beneficial and promotional exemption is liberal interpretation. The two go very well with each other because they relate to two different sets of circumstances.

11. *The notification issued by the Central Government in exercise of the powers conferred by Section 25(1) of the Act exempts the articles enumerated in the table annexed when imported into India from payment of duty under the Act. The language used in the notification is plain and unambiguous. Therefore, we are required to consider the same in their ordinary sense. A construction which permits one to take advantage of one's own wrong or to impair one's own objections under a Statute should be disregarded. The interpretation should as far as possible be beneficial in the sense that it should suppress the mischief and advance the remedy without doing violence to the language."*

4.6 In the case of Auro Laboratories [2016 (344) ELT 391 (T)] following has been held:-

*"**10.** Taking cognizance of the sore fact that the victims of cataract blindness in this country is registering staggering height, year after year. As 'vision' in the eyes is of paramount importance, than any other limbs to the human beings, bestowing sufficient concentration on this vital aspect should receive the utmost attention of the authorities by being liberal in passing benefits of such notifications. Any attempt to deny such benefits on technical grounds would contribute to the alarming growth in loss of vision, which no progressive society can afford. Keeping this in mind, the solitary ground that led to the denial of the benefit under the said notification was that the certificate was not countersigned by an officer of stipulated rank viz., not below the rank of a Joint Secretary to the Govt. of India. In the instant case, the said certificate had been signed by the Under*

Secretary to the Govt. of India. There is understandably difference between an unsigned certificate and a certificate which was signed but not countersigned. Taking into the account the well settled principle that procedural infirmities such as the present one should not be allowed to the extent of denying the very benefit offered by the above said notification which is beneficial in nature, and only granting, rather than non-granting, will be in consonance with the legislative intent.

11. *The case laws relied by the AR are inapplicable here as the goods in the case of Hari Chand Shri Gopal were cleared under an exemption by not following the procedures laid down in Chapter X. In the instant case, the clearance of the goods is not in doubt and the project is one funded by the World Bank intended for a noble cause. In the case of Eagle Flask Industries, there was a condition of filing a declaration/an undertaking which was so basic and not complied with. In the instant case, there has been substantial compliance with the notification barring the absence of countersignature by an officer not below the rank of a Joint Secretary. With regard to the third case law viz. M/s. Sterlite Industries, which was a case wherein the exemption was under Notification No. 108/95 but the reason for which the exemption was denied, was failure to establish that the condition precedent was satisfied and the said condition being a certificate issued in terms of para (c)(ii) by the implementing authority can be of no avail as the said authority was indeed empowered to issue a certificate, if the project is financed by an International Organization. This case also does not support the Revenue as in the instant case there has been a certificate with the only infirmity being non-countersigned."*

4.7 In the case of Engineering Innovations Ltd. [2009 (242) ELT 153 (T)] Tribunal has held as follows:-

"***4.*** *We have considered the submissions. We agree with the appellant's contention that counter signature of the Industrial Adviser would be sufficient compliance with the Notification. No importer can compel the officers to issue permission in a particular manner. The counter signature would mean that the Industrial Adviser has seen the certificate and is recommending*

it, which is the main purpose of the notification. As regards description on comparison with the bill of entry, we find that the description given in the bill of entry tallies with the recommendation letter given by the Industrial Adviser. We do not agree with the argument that all the specifications should be mentioned in the letter in detail. The recommendation letter also gives the value of the machinery in addition to the main name of the machine which should be sufficient for the purpose of comparison. It is not the case of the Revenue that the machines imported by the appellants have not been used for the purpose or exemption notification has been misused. Therefore, appeal is allowed with consequential relief to the appellants."

5.1 In view of the above decisions, we do not find any merits in the impugned order and set aside the same.

5.2 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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