

	केन्द्रीय कर आयुक्त (अपील)		
	O/O THE COMMISSIONER (APPEALS), CENTRAL TAX,		
सत्यमेव जयते	वस्तु एवं सेवा कर भवन	GST Building, 7 th Floor, Near Polytechnic, Ambavadi, Ahmedabad- 380015	
	सातवीं मंजिल, पॉलिटेक्निक के पास, आम्बावाडी, अहमदाबाद-380015		
 079-26305065			टेलिफैक्स: 079-26305136

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क फाइल संख्या : File No : **V2/3/RA/GNR/2018-19**

ख अपील आदेश संख्या : Order-In-Appeal No.: **AHM-EXCUS-003-APP-0103-18-19**

दिनांक Date : **14-10-2018** जारी करने की तारीख Date of Issue: **26/10/2018**

श्री उमाशंकर आयुक्त (अपील) द्वारा पारित

Passed by **Shri Uma Shanker** Commissioner (Appeals) Ahmedabad

ग अपर आयुक्त, केन्द्रीय उत्पाद शुल्क, अहमदाबाद-III आयुक्तालय द्वारा जारी मूल आदेश :
AHM-CEX-003-ADC-AJS-016-17-18 दिनांक : **19-01-2018** से सृजित

Arising out of Order-in-Original: **AHM-CEX-003-ADC-AJS-016-17-18**, Date: **19-01-2018**
Issued by: Add. Commissioner, Central Excise, Div: Gandhinagar, Ahmedabad-III.

घ अपीलकर्ता एवं प्रतिवादी का नाम एवं पता

Name & Address of the Appellant & Respondent

M/s. Ratnamani Metals & Tubes Pvt Ltd

कोई व्यक्ति इस अपील आदेश से असंतोष अनुभव करता है तो वह इस आदेश के प्रति यथास्थिति नीचे बताए गए सक्षम अधिकारी को अपील या पुनरीक्षण आवेदन प्रस्तुत कर सकता है।

Any person aggrieved by this Order-In-Appeal may file an appeal or revision application, as the one may be against such order, to the appropriate authority in the following way :

भारत सरकार का पुनरीक्षण आवेदन :

Revision application to Government of India :

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1994 की धारा अंतर्गत नीचे बताए गए मामलों के बारे में पूर्वोक्त धारा को उप-धारा के प्रथम परन्तुक के अंतर्गत पुनरीक्षण आवेदन अवर सचिव, भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली : 110001 को की जानी चाहिए।

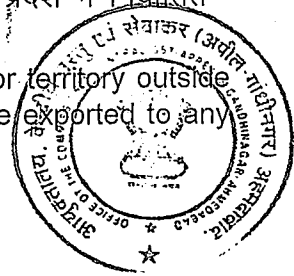
(i) A revision application lies to the Under Secretary, to the Govt. of India, Revision Application Unit Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi - 110 001 under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section-35 ibid :

(ii) यदि माल की हानि के मामले में जब ऐसी हानि कारखाने से किसी भण्डागार या अन्य कारखाने में या किसी भण्डागार से दूसरे भण्डागार में माल ले जाते हुए मार्ग में, या किसी भण्डागार या भण्डार में चाहे वह किसी कारखाने में या किसी भण्डागार में हो माल की प्रक्रिया के दौरान हुई हो।

(ii) In case of any loss of goods where the loss occur in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse.

(ख) भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित माल पर या माल के विनिर्माण में उपयोग शुल्क कच्चे माल पर उत्पादन शुल्क के रिबेट के मामलों में जो भारत के बाहर किसी राष्ट्र या प्रदेश में निर्यातित है।

(b) In case of rebate of duty of excise on goods exported to any country or territory outside India of on excisable material used in the manufacture of the goods which are exported to any country or territory outside India.



- (ग) यदि शुल्क का भुगतान किए बिना भारत के बाहर (नेपाल या भूटान को) निर्यात किया गया माल हो।
- (c) In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

ध अंतिम उत्पादन की उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट मान्य की गई है और ऐसे आदेश जो इस धारा एवं नियम के मुताबिक आयुक्त, अपील के द्वारा पारित वो समय पर या बाद में वित्त अधिनियम (नं.2) 1998 धारा 109 द्वारा नियुक्त किए गए हो।

(d) Credit of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under and such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec.109 of the Finance (No.2) Act, 1998.

(1) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 के नियम 9 के अंतर्गत विनिर्दिष्ट प्रपत्र संख्या इ.ए-8 में दो प्रतियों में, प्रेषित आदेश के प्रति आदेश प्रेषित दिनांक से तीन मास के भीतर मूल-आदेश एवं अपील आदेश की दो-दो प्रतियों के साथ उचित आवेदन किया जाना चाहिए। उसके साथ खाता इ. का मुख्यशीर्ष के अंतर्गत धारा 35-इ में निर्धारित फी के भुगतान के सबूत के साथ टीआर-6 चालान की प्रति भी होनी चाहिए।

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the OIO and Order-In-Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(2) रिविजन आवेदन के साथ जहाँ संलग्न रकम एक लाख रुपये या उससे कम हो तो रुपये 200/- फीस भुगतान की जाए और जहाँ संलग्न रकम एक लाख से ज्यादा हो तो 1000/- की फीस भुगतान की जाए।

The revision application shall be accompanied by a fee of Rs.200/- where the amount involved is Rupees One Lac or less and Rs.1,000/- where the amount involved is more than Rupees One Lac.

सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील:-
Appeal to Custom, Excise, & Service Tax Appellate Tribunal.

(1) केन्द्रीय उत्पादन शुल्क अधिनियम, 1944 की धारा 35- षोबी/35-इ के अंतर्गत:-

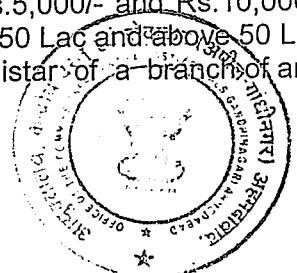
Under Section 35B/ 35E of CEA, 1944 an appeal lies to :-

उक्तलिखित परिच्छेद 2 (1) क में बताए अनुसार के अलावा की अपील, अपीलो के मामले में सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (सिस्टेट) की पश्चिम क्षेत्रीय पीठिका, अहमदाबाद में ओ-20, न्यू मेटल हास्पिटल कम्पाउण्ड, मेघानी नगर, अहमदाबाद-380016.

To the west regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at O-20, New Metal Hospital Compound, Meghani Nagar, Ahmedabad : 380 016. in case of appeals other than as mentioned in para-2(i) (a) above.

(2) केन्द्रीय उत्पादन शुल्क (अपील) नियमावली, 2001 की धारा 6 के अंतर्गत प्रपत्र इ.ए-3 में निर्धारित किए अनुसार अपीलीय न्यायाधिकरणों की गई अपील के विरुद्ध अपील किए गए आदेश की चार प्रतियाँ सहित जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या उससे कम है वहाँ रूपए 1000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 5 लाख या 50 लाख तक हो तो रूपए 5000/- फीस भेजनी होगी। जहाँ उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना रूपए 50 लाख या उससे ज्यादा है वहाँ रूपए 10000/- फीस भेजनी होगी। की फीस सहायक रजिस्टार के नाम से रेखांकित बैंक ड्राफ्ट के रूप में संबंध की जाये। यह ड्राफ्ट उस स्थान के किसी नामित सार्वजनिक क्षेत्र के बैंक की शाखा का हो

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 as prescribed under Rule 6 of Central Excise(Appeal) Rules, 2001 and shall be accompanied against (one which at least should be accompanied by a fee of Rs.1,000/-, Rs.5,000/- and Rs.10,000/- where amount of duty / penalty / demand / refund is upto 5 Lac, 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asstt. Registrar of a branch of any



nominate public sector bank of the place where the bench of any nominate public sector bank of the place where the bench of the Tribunal is situated

(3) यदि इस आदेश में कई मूल आदेशों का समावेश होता है तो प्रत्येक मूल आदेश के लिए फीस का भुगतान उपर्युक्त ढंग से किया जाना चाहिए इस तथ्य के होते हुए भी कि लिखा पढी कार्य से बचने के लिए यथास्थिति अपीलीय न्यायाधिकरण को एक अपील या केन्द्रीय सरकार को एक आवेदन किया जाता है।

In case of the order covers a number of order-in-Original, fee for each O.I.O. should be paid in the aforesaid manner notwithstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filled to avoid scriptoria work if excising Rs. 1 lacs fee of Rs.100/- for each.

(4) न्यायालय शुल्क अधिनियम 1970 यथा संशोधित की अनुसूची-1 के अंतर्गत निर्धारित किए अनुसार उक्त आवेदन या मूल आदेश यथास्थिति निर्णयन प्राधिकारी के आदेश में से प्रत्येक की एक प्रति पर रु.6.50 पैसे का न्यायालय शुल्क टिकट लगा होना चाहिए।

One copy of application or O.I.O. as the case may be, and the order of the adjournment authority shall bear a court fee stamp of Rs.6.50 paise as prescribed under scheduled-I item of the court fee Act, 1975 as amended.

(5) इन ओर संबंधित मामलों को नियंत्रण करने वाले नियमों की ओर भी ध्यान आकर्षित किया जाता है जो सीमा शुल्क, केन्द्रीय उत्पादन शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (कार्याविधि) नियम, 1982 में निहित है।

Attention is invited to the rules covering these and other related matter contended in the Customs, Excise & Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(6) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सीस्टेट) के प्रति अपीलों के मामलों में केन्द्रीय उत्पाद शुल्क अधिनियम, 1984 की धारा 35F के अंतर्गत वित्तीय(संख्या-2) अधिनियम 2014(2014 की संख्या 25) दिनांक: 06.08.2014 जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, द्वारा निश्चित की गई पूर्व-राशि जमा करना अनिवार्य है, बशर्ते कि इस धारा के अंतर्गत जमा की जाने वाली अपेक्षित देय राशि दस करोड़ रूपए से अधिक न हो

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत " माँग किए गए शुल्क " में निम्न शामिल है

- (i) धारा 11 डी के अंतर्गत निर्धारित रकम
- (ii) सेनवैट जमा की ली गई गलत राशि
- (iii) सेनवैट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

→ आगे बशर्ते यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम, 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचाराधीन स्थगन अर्जी एवं अपील को लागू नहीं होगा।

For an appeal to be filed before the CESTAT, it is mandatory to pre-deposit an amount specified under the Finance (No. 2) Act, 2014 (No. 25 of 2014) dated 06.08.2014, under section 35F of the Central Excise Act, 1944 which is also made applicable to Service Tax under section 83 of the Finance Act, 1994 provided the amount of pre-deposit payable would be subject to ceiling of Rs. Ten Crores,
Under Central Excise and Service Tax, "Duty demanded" shall include:

- (i) amount determined under Section 11 D;
- (ii) amount of erroneous Cenvat Credit taken;
- (iii) amount payable under Rule 6 of the Cenvat Credit Rules.

→ Provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

(6)(i) इस आदेश के प्रति अपील प्राधिकरण के समक्ष जहाँ शुल्क अथवा शुल्क या दण्ड विवादित हो तो माँग किए गए शुल्क के 10% भुगतान पर और जहाँ केवल दण्ड विवादित हो तब दण्ड के 10% भुगतान पर की जा सकती है।

(6)(i) In view of above, an appeal against this order shall lie before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty, where penalty alone is in dispute."



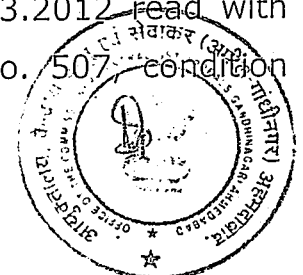
ORDER-IN-APPEAL

Assistant Commissioner, CGST, Division- Kalol, Gandhinagar [*for short - 'appellant'*] has filed this appeal against OIO No. AHM-CEX-003-ADC-AJS-016-17-18 Dated 19.01.2018 passed by the Additional Commissioner, CGST, Gandhinagar [*for short - 'adjudicating authority'*]. The appeal has been filed based on the authorization and review order No. 51/2017-18 dtd. 20.04.2018 issued by the Commissioner, Central GST & CX, Gandhinagar from F. No. IV/16-224/Dem/OIO/2017-18 dated 20.04.2018. The respondent in the appeal is M/s. Ratnamani Metals & Tubes Ltd., Plot No. 3306 to 3309, GIDC, Phase-IV, Chhatral, Taluka-Kalol, Gandhinagar (herein after referred to as the respondent).

2. Briefly stated, the facts are that during central excise audit conducted for the period from February-2012 to February-2013, it was observed that the respondent cleared goods to M/s. Kalpataru Power Transmissions Ltd. (for short M/s KPTL) for final utilisation in the project of Oil India Ltd. under International Competitive Bidding (ICB) without payment of duty as per exemption provided vide notification No. 12/2012-Central Excise (Sl. No. 336, condition No. 41) dated 17.3.2012 read with Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 356). It was observed that the respondent had not fulfilled the condition No. 41 (c) (i) and 41 (c) (iii) of Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 356). The total central excise duty involved in the goods cleared under exemption amounted to Rs. 34,83,554/-.

2.1 It was further observed that the respondent cleared goods to M/s. Engineers India Ltd (for short M/s EIL) for final utilisation in the project of M/s Gujarat State Petroleum Corporation under ICB without payment of duty as per exemption provided vide notification No. 12/2012-Central Excise (Sl. No. 336, condition No. 41) dated 17.3.2012 read with Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 358, condition No. 43). It was observed that the respondent had not fulfilled the condition No. 43 (c) (i) and 41 (c) (iii) of Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 356, condition No. 43). The total central excise duty involved in the goods cleared under exemption amounted to Rs. 72,62,470/-.

2.2 It was further observed that the respondent cleared goods to M/s. Maharashtra State Power Generation Company Ltd. for utilisation in the 3x660 MW Mega Power project at Korida, Nagpur under ICB without payment of duty as per exemption provided vide notification No. 12/2012-Central Excise (Sl. No. 336, condition No. 41) dated 17.3.2012 read with Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 507 condition



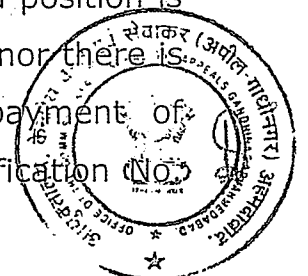
No. 93). It was observed that the respondent had not fulfilled the condition No. 93 (ii) (b) of Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 356, condition No. 93). This condition requires submission of certification of the quantity, total value, description and specifications of the imported goods by the chairman and managing Director of the said Central Public Sector Undertaking. The total central excise duty involved in the goods cleared under exemption amounted to Rs. 3,64,159/-.

2.3 It was further observed that the respondent cleared goods to M/s. Nabha Power Project (through Larson & Toubro Ltd.) for 2x700 MW Rajpara Power Project, Patiala under ICB without payment of duty as per exemption provided vide notification No. 12/2012-Central Excise (Sl. No. 338, condition No. 43) dated 17.3.2012. It was observed that the respondent had not fulfilled the condition No. 43 (d) (i) of Notification No. 12/2012-Cus. Dtd. 17.03.2012 (Serial No. 338, condition No. 43). This condition requires submission of proof/evidence that the materials supplied by the respondent are utilized exclusively in the referred power project. The total central excise duty involved in the goods cleared under exemption amounted to Rs. 2,38,115/-.

3. In view of the above, a show cause notice dtd. 16.02.2017 came to be issued to the respondent, asking him to show cause as to why the central excise duty amounting to Rs. 1,13,48,298/- on goods cleared without payment of duty in contravention to the conditions of the exemption notifications should not be demanded and recovered with interest and also proposed imposition of penalty. This show cause notice was adjudicated vide the impugned order wherein the then adjudicating authority vacated the demand and dropped the show cause notice. Aggrieved by the impugned order, this appeal has been filed based on the authorization and review order No. 51/2017-18 dtd. 20.04.2018 issued by the Commissioner, Central GST & CX, Gandhinagar from F. No. IV/16-224/Dem/OIO/2017-18 dated 20.04.2018.

4. The Commissioner, Central Excise, Gandhinagar has reviewed the impugned OIO and has authorized the appellant to file this appeal, wherein the following grounds are raised:

- a) For availing the benefits of the Notification No. 12/2012-CE (Sr. No. 336) *ibid*, one has to comply the conditions no. 41 which says that exemption is admissible subject to the condition if it is exempted from duties of customs when imported in India and the admitted position is that CS Welded pipes are neither attracting NIL tariff rate nor there is any notification granting conditional exemption from payment of Customs duty. Hence for availing the benefit of the Notification (No.



- 12/2012-CE dtd. 17.03.2012 (Sr. No. 3.36) ibid read with the condition no. 41, one has to examine whether there is any Customs Notification which grants exemption with some conditions. Therefore so far as conditions laid down are not fulfilled, it cannot be held that it is exempted from payment of Customs duties when imported into India and in that case, the condition no. 41 ibid is not fulfilled;
- b) That it cannot be said that the conditions no. 41 & 43 of the Notification No. 12/2012-CUS (Sr. No. 356 & 358) ibid are disjoint and not conjoint to the condition No. 41 of the Notification No. 12/2012-CE dtd. 17.03.2012 (Sr. No. 3.36) ibid and the conditions no. 41 & 43 of the Customs notification are to be complied with by the importer or sub-contractor in respect of goods imported in India;
- c) The proviso inserted in condition no. 41 of the notification no. 12/2012-CE vide the notification no. 12/2015-CE does not lay either any new provisions/condition or alter any existing condition. It is only clarificatory in nature;
- d) The CBEC Circular No. 96/85/2015-CX dtd. 07.12.2015 circulating the minutes of Tariff Conference held on 28/29.10.2015 held that the condition prescribed in Customs Notification is to be read mutatis mutandis for excise exemption. The purpose of the suggestion was to bring more clarity to avoid the dispute;
- e) The case laws of D.C.MPEZ, SEZ & HEOU Chennai vs. Hospira Healthcare India Pvt. Ltd. - 2017 (356) ELT-167 (Mad.), Manavat Plastics Pvt. Ltd. vs. CESTAT, Mumbai - 2017 (348) ELT-447 (Bom.), India Cements Ltd. vs. CCE, Salem - 2015 (325) ELT-502 (Mad.) clearly hold that notifications explaining an already existing provisions are clarificatory;
- f) The impugned order has been passed on the grounds that the conditions of the notifications have been fulfilled and these conditions have been borrowed from the customs notification. It is therefore clear that the adjudicating authority has read the central excise notification and the customs notification conjointly. Thus the adjudicating authority at once decides that both the notifications are disjoint to each other and on the other hand, he reads both the notifications conjointly;
- g) In the notification no. 12/2012-Cus., there is a list 13 and the goods falling in that list are eligible for exemption i.e the goods specified in that list are eligible for exemption and the respondent has not submitted any proof that the goods supplied by them fall in that list;
- h) That the project authority certificate is issued by M/s Oil India Ltd. Ad M/s GSPC and it does not satisfy any of the conditions i.e. it is not



specifying whether the goods are required in connection with petroleum operations to be undertaken under a contract with the Government of India;

- i) That the respondents have not produced any certificate either before clearance of the goods or at the time of adjudication proceedings from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India and there is no affidavit on record;
 - j) The Hon'ble Supreme Court of India in the case of Eagle Flask Industry Ltd. Vs. Commissioner of C.Ex., Pune – 2004 (171) ELT-296 (S.C.) has held that submission of declaration and undertaking are not empty formalities and this is the foundation for availing the benefits under the notification; in the case of Star Industries Vs. Commissioner of Cus. (Import), Raigad – 2015 (324) ELT-656 (S.C.), the apex court has held that the exemption notification should be construed strictly and even if there is some doubt, benefit thereof shall not ensure to the assessee but would be given to the Revenue. In the case of CCE, Pondicherry Vs. Honda Siel Power Products Ltd. – 2015-TOIL-247-SC-CX, the apex court has held that the exemption notification should be construed strictly and even if there is some doubt, benefit thereof shall be given to the department;
5. The respondents also filed their cross objections against the appeal and in that they have contended that;
- i. They cleared C.S.Welded pipes to M/s KTPL, a contractor appointed by M/s Oil India Ltd and to M/s Engineer India Ltd., a contractor of M/s GSPS on receipt of a project authority certificate from both certifying that the goods were required in connection with petroleum operations undertaken under Petroleum Exploration Licenses under International Competitive Bidding and accordingly they availed exemption under due intimation to the jurisdictional Assistant Commissioner and they also submitted an undertaking binding them to pay any duty, fine or penalty that may become payable if any of the conditions of that notification are not complied with;
 - ii. That the conditions regarding production of essentiality certificate from D.G. Hydrocarbon & undertaking etc. were applicable to importers only and not to domestic manufacturers. They seek support from the case law of Kent Introl Pvt. Ltd. Vs. Commissioner of C.Ex., Nasik – 2016 (331) ELT-77 (Bom.) and jindal Steel & Power Ltd. Vs. Commissioner of C.Ex. – 2015 (329) ELT-595 (Trib.) in which it was held that the conditions imposed under customs notification no. 21/2012 are to be



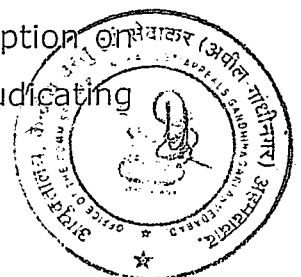
satisfied by importers only and the conditions imposed under the customs notification were made applicable to domestic manufacturers only with effect from 01.03.2015 when the notification 12/2012 was amended by the notification no. 12/2015-CE;

- iii. That they cannot be charged with suppression and therefore the demand is also hit by limitation as they had cleared goods after due intimation to the jurisdictional Assistant Commissioner and the availment of exemption was clearly reflected in the ER-1 returns. They seek support from the case law of Commissioner vs. Sab Nife Power Systems Ltd. – 2002 (141) ELT-A95 (S.C.) and Northern Plastic Ltd. Vs. Commissioner – 1998 (101) ELT-549 (SC) wherein it was held that when relevant information has been declared then it cannot be charged that there was any misdeclaration or suppression;
- iv. They were under genuine belief that the conditions prescribed under the customs notification by their wordings were applicable only to an importer and not to a domestic manufacturer;
- v. It cannot be meant that if an exemption availed by a unit working under self removal procedure is declared inadmissible later, it will ipso facto amount to intentional wrongful availment of the said exemption with an intention to evade duty. They seek reliance from the case law of Uniworth Textiles – 2013 (288) ELT-161 (SC) wherein it was held that mere non-payment of duty is not equivalent to collusion or wilful misstatement or suppression of facts;
- vi. That even if it is presumed that the notification no. 12/2015-CE was retrospective in nature, it cannot result in charging the applicant with intentional evasion of duty and it was a matter of interpretation where different courts were taking different views and in such situation, invoking extended time is not correct as held in the case of CCE Trichy vs. Grasim Industries – 2005 (183) ELT-123 (SC), Commissioner vs. AP Paper Mills – 2015 (319) ELT-554 (SC), Commissioner vs. Kolety Gum Industries – 2016 (335) ELT-581 (SC) etc..

6. Personal hearing was held on 26.06.2018 in which Shri R. Ravichandran, Sr. General Manager (Commercial) appeared on behalf of the respondent and reiterated the grounds of cross objections and explained the Notification No. 12/2015 dtd. 01.03.2015.

7. I have gone through the facts of the case, the appellant's grounds of appeal. I have also gone through the cross objections filed by the respondents and submissions made during the personal hearing:

8. The issue involved in the appeal is that of availment of exemption clearances made under International Competitive Bidding. The adjudicating



authority has held the issue in favour of the respondents and has held them eligible for exemption whereas the department is in appeal on the grounds that the respondents had not fulfilled the conditions of the exemption notification and therefore the benefit should not have been given. Here the most important aspect of the appeal by the appellants is that they are not contesting the order dealing with the issue mentioned at Sr. No. 3 and 4 of the impugned order as detailed in para 17 of the review order dtd. 20.04.2018 and are here in appeal only against the issues dealt with at Sr. No. 1 & 2. I therefore proceed to decide the issues dealt with at Sr. No. 1 & 2 only. Accordingly the impugned order is upheld as far as it deals with the issues mentioned at Sr. No. 3 & 4.

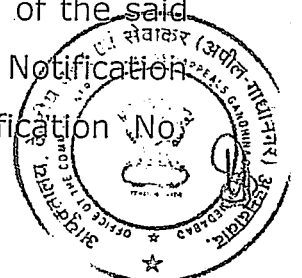
9. As these are the only two issues raised in the appeal, I first take up the first issue related to clearance to M/s KTPL. It is not in dispute that the goods have been cleared under ICB under Exemption Notification No. 06/2006-CE dtd. 01.03.2006 as amended by Notification No. 12/2012-CE dtd. 17.03.2012 and this notification grants exemption from duty on observance of conditions provide in that Notification. It is alleged that the respondents have not fulfilled the condition No. 41 for the goods mentioned at Sr. No. 336 of the Notification. The relevant part of the notification No. 12/2012-CE dtd. 01.03.2012 (Sr. No. 336) is reproduced herein below:

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
335	Any Chapter	Parts of hearing aids	Nil	-
336	Any Chapter	All goods supplied against International Competitive Bidding.	Nil	41

It is obvious that the exemption contained in the notification is subject the fulfilment of condition no. 41 which is reproduced herein below:

41.	If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India.
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This condition clearly provides that the goods should be exempted from the duties of customs leviable under the first Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. Now the relevant Notification providing exemption from the duties of Customs is the Notification No.

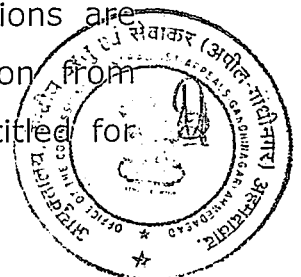


12/2012-Cus. Dtd. 17.03.2012 and the goods have been mentioned at Sr. No. 356 which are proposed to be exempted subject to the fulfilment of condition No. 41. In the instant case, the goods have been cleared to M/s KPTL and it is not in dispute that M/s KPTL is a sub-contractor of M/s Oil India Ltd. (for short OIL). On going through the Notification No. 12/2012-Cus., I find that the relevant part of the condition No. 41 (c) which deals with the import by a sub-contractor, prescribes that if the goods are imported by a sub-contractor, he produces to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation, the following:-

- (i) *a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the licenses or mining leases, as the case may be, referred to in that clause and containing the name of the sub-contractor;*
- (ii) *an affidavit to the effect that such sub-contractor is a bona fide sub-contractor of the licensee or lessee, as the case may be,*
- (iii) *an undertaking from such licensee or lessee, as the case may be binding him to pay any duty, fine or penalty that may become payable, if any of the conditions of this notification are not complied with by such sub-contractor or licensee or lessee, as the case may be, and*
- (iv) *a certificate, in the case of a petroleum exploration license or mining lease, as the case may be, issued or renewed after the 1st of April, 1999, by the Government of India or any State Government on nomination basis, that no foreign exchange remittance is made for the import of such goods undertaken by the sub-contractor on behalf of the licensee or lessee, as the case may be:*

Provided that nothing contained in this sub-clause shall apply if such sub-contractor is an Indian Company or Companies. (emphasis supplied)

From the plain reading of the condition no. 41 in respect of Sr. No. 356 of the notification No. 12/2012-Cus., it is found that the conditions are meant to be fulfilled by a sub-contractor for availing exemption from customs duty and on fulfilment of those conditions, they are entitled for



exemption contained in the Notification No. 12/2012-CE. It is not in dispute that the respondents have failed to follow the condition Nos. 41 (c) (i) and 41 (c) (iii) of Serial No. 356 of the Notification No. 12/2012-Cus. as before clearance of goods without payment of central excise duty, it is imperative on part of the respondent that they ensure that they have full authority and proper documents which entitle them for making clearances without payment of duty and in the instant case, they have failed to do so. I do not agree with the contention made by the respondents that they were not required to follow the condition and therefore they are eligible for exemption contained in the notification as the other ingredients of the exemption eligibility are not in dispute. When any exemption from payment of central excise duty is to be availed, all the conditions prescribed in the concerned notification must be fulfilled otherwise it will defeat the very purpose of granting exemption and will lead to leakage of revenue. In the instant case, the respondents have failed to ensure that the condition nos. 41 (c) (i) and (iii) have been fulfilled by the consignee i.e. they failed to ensure that the consignee had a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the licenses or mining leases, as the case may be, referred to in that clause and containing the name of the sub-contractor and an undertaking from such licensee or lessee, as the case may be binding him to pay any duty, fine or penalty that may become payable, if any of the conditions of this notification are not complied with by such sub-contractor or licensee or lessee, as the case may be. I therefore hold that the respondents are not eligible for exemption under the Notification No. 12/2012-CE. I find support from the Hon'ble Supreme Court's decision in the case of M/s Eagle Flask Ind. Ltd. Vs. Commissioner of C.Ex., Pune - 2004 (171) ELT-296 (S.C.) in which it has been held and I quote the relevant part herein below:

"6. We find that Notification 11/88 deals with exemption from operation of Rule 174 to exempted goods. The Notification has been issued in exercise of powers conferred by Rule 174A of the Rules. Inter alia it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short 'the Tariff Act'). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the Form annexed, while claiming exemption for the first time under this Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including



CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed. (emphasis supplied)

In view of the above, I hold that the respondents have cleared the goods without payment of central excise duty without having fulfilled conditions of the exemption notification and accordingly their appeal is rejected as far as it relates to this issue.

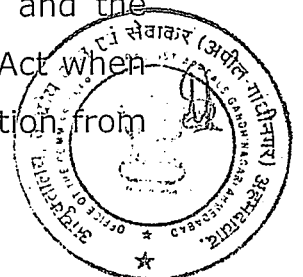
10. I now take up the second issue related to clearance to M/s EIL. It is not in dispute that the goods have been cleared under ICB under Exemption Notification No. 06/2006-CE dtd. 01.03.2006 as amended by Notification No. 12/2012-CE dtd. 17.03.2012 and this notification grants exemption from duty on observance of conditions provide in that Notification. It is alleged that the respondents have not fulfilled the condition No. 41 for the goods mentioned at Sr. No. 336 of the Notification. The relevant part of the notification No. 12/2012-CE dtd. 01.03.2012 (Sr. No. 336) is reproduced herein below:

Sl. No.	Chapter or heading or sub-heading or tariff item of the First Schedule	Description of excisable goods	Rate	Condition No.
335	Any Chapter	Parts of hearing aids	Nil	-
336	Any Chapter	All goods supplied against International Competitive Bidding.	Nil	41

It is obvious that the exemption contained in the notification is subject the fulfilment of condition no. 41 which is reproduced herein below:

41.	If the goods are exempted from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty leviable under section 3 of the said Customs Tariff Act when imported into India.
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This condition clearly provides that the goods should be exempted (conditional or unconditional as the case may be) from the duties of customs leviable under the first Schedule to the Customs Tariff Act, 1975 and the additional duty leviable under Section 3 of the said Customs Tariff Act when imported into India. Now the relevant Notification providing exemption from

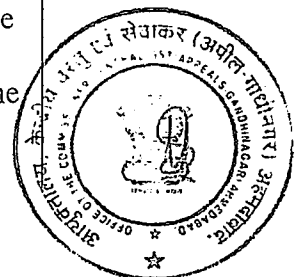


the duties of Customs is the Notification No. 12/2012-Cus. Dtd. 17.03.2012 and the goods have been mentioned at Sr. No. 358 which are proposed to be exempted subject to the fulfilment of condition No. 41. In the instant case, the goods have been cleared to M/s EIL and it is not in dispute that M/s EIL is a sub-contractor of M/s Gujarat State Petroleum Corporation (for short GSPC). I reproduce the relevant part of the Notification No. 12/2012-Cus. which deals with Sr. No. 358 as under:

357.	84 or any other Chapter	Parts and raw materials for manufacture of goods to be supplied in connection with the purposes of offshore oil exploration or exploitation	Nil	Nil	42
358.	84 or any other Chapter	Goods specified in List 13 required in connection with petroleum operations undertaken under specified contracts	Nil	Nil	43

On going through the Notification No. 12/2012-Cus. and Sr. No. 358, it grants exemption to goods specified in List 13 subject to fulfilment of the condition No. 43. I find that the relevant part of the condition No. 43 (c) which deals with the import by a sub-contractor, prescribes that if the goods are imported by a sub-contractor, he produces to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, at the time of importation, the following:-

43.	<p>If,-</p> <p>(a) the goods are imported by an Indian Company or Companies, a Foreign Company or Companies, or a consortium of an Indian Company or Companies and a Foreign Company or Companies (hereinafter referred to as the "contractor") or a sub-contractor of the contractor and in each case in connection with petroleum operations to be undertaken under a contract with the Government of India;</p> <p>(b) where the importer is a contractor, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, the following, namely :-</p> <p>(i) a certificate from a duly authorised officer of the Directorate General of Hydro Carbons in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the contract referred to in that clause, and</p> <p>(ii) a certificate, in the case of a contract entered into by the Government of India and a Foreign Company or Companies or, the Government of India and a consortium of an Indian Company or Companies and a Foreign Company or Companies, that no foreign exchange remittance is made for the</p>
	<p>imports of such goods undertaken by such Foreign Company or Companies;</p> <p>(c) where the importer is a sub-contractor, he produces to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, at the time of importation, the following, namely:-</p> <p>(i) a certificate from a duly authorised officer of the</p>

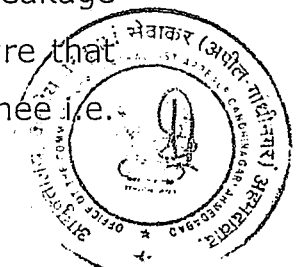


Directorate General of Hydro Carbons, in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the contract referred to in that clause and containing, the name of such sub-contractor,

- (ii) an affidavit to the effect that such sub-contractor is a *bona-fide* sub-contractor of the contractor,
- (iii) an undertaking from such contractor, binding him to pay any duty, fine or penalty that may become payable, if any of the conditions of this notification are not complied with, by such sub-contractor or contractor, as the case may be, and
- (iv) a certificate, in the case of a contract entered into by the Government of India and a Foreign Company or Companies or, the Government of India and a consortium of an Indian Company or Companies and a Foreign Company or Companies, that no foreign exchange remittance is made for the import of such goods undertaken by the sub-contractor on behalf of the Foreign Company or Companies :

Provided that nothing contained in this sub-clause shall apply if such sub-contractor is an Indian Company or Companies.

From the plain reading of the condition no. 43 in respect of Sr. No. 358 of the notification No. 12/2012-Cus., it is found that the conditions are meant to be fulfilled by a sub-contractor for availing exemption from customs duty and on fulfilment of those conditions, they are entitled for exemption contained in the Notification No. 12/2012-CE. The appellant's argument that Central Excise Notification No. 12/2012-CE, is stand alone and independent notification, is not acceptable. If Sr. No. 336 and condition No. 41 of 12/2012-CE *ibid*, is considered, it makes amply clear that "all goods....leviable under..." means exemption or extent of exemption under Central Excise will be read along with applicable Customs Notification. This is the only natural corollary. It is not in dispute that the respondents have failed to follow the condition Nos. 43 (c) (i) and 41 (c) (iii) of Serial No. 358 of the Notification No. 12/2012-Cus. as before clearance of goods without payment of central excise duty, it is imperative on part of the respondent that they ensure that they have full authority and proper documents which entitle them for making clearances without payment of duty and in the instant case, they have failed to do so. I do not agree with the contention made by the respondents that they were not required to follow the condition and therefore they are eligible for exemption contained in the notification as the other ingredients of the exemption eligibility are not in dispute. When any exemption from payment of central excise duty is to be availed, all the conditions prescribed in the concerned notification must be fulfilled otherwise it will defeat the very purpose of granting exemption and will lead to leakage of revenue. In the instant case, the respondents have failed to ensure that the condition nos. 41 (c) (i) and (iii) have been fulfilled by the consignee i.e.



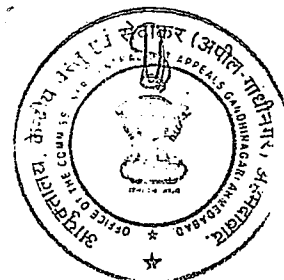
they failed to ensure that the consignee had a certificate from a duly authorised officer of the Directorate General of Hydro Carbons, in the Ministry of Petroleum and Natural Gas, Government of India, to the effect that the imported goods are required for petroleum operations referred to in clause (a) and have been imported under the contract referred to in that clause and containing, the name of such sub-contractor and an undertaking from such licensee or lessee, as the case may be binding him to pay any duty, fine or penalty that may become payable, if any of the conditions of this notification are not complied with by such sub-contractor or contractor, as the case may be. I therefore hold that the respondents are not eligible for exemption under the Notification No. 12/2012-CE. I find support from the Hon'ble Supreme Court's decision in the case of M/s Eagle Flask Ind. Ltd. Vs. Commissioner of C.Ex., Pune (supra). In view of the above, I hold that the respondents have cleared the goods without payment of central excise duty without having fulfilled conditions of the exemption notification and accordingly their appeal is rejected as far as it relates to this issue.

11. The appellants have cited the CBEC Circular No. 96/85/2015-CX dtd. 07.12.2015 and tried to create an impression that there was a dispute in this regard and this was solved only after the Notification No. 12/2015-CE was issued. This is not correct. The Notification No. 12/2015 ibid is clarificatory in nature and clarifies condition which was known to the trade and was also being followed largely. Since this notification was clarificatory, it was retrospective as it did not propose anything new which was not known to the trade and industry.

12. I also consider the contention of the department about the notification no. 12/2012-Cus. for which it has been argued that there is a "List-13" and the goods falling in that list only are eligible for exemption i.e the goods specified in that list are eligible for exemption and the respondent has not submitted any proof that the goods supplied by them fall in that list. I find that nothing has been produced before me by the respondents that the goods supplied were falling in the List 13 which is a condition and only those goods falling in list 13 are eligible for exemption.

13. In view of the above findings, I find that the impugned order is required to be set aside as far as it relates to issues discussed above. The appeal is allowed.

14. अपीलकर्ता द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।



The appeal filed by the appellants stands disposed of in above terms.

30/12/18

(उमा शंकर)

केंद्रीय कर आयुक्त (अपील्स)

अहमदाबाद

दिनांक:

सत्यापित

(Signature)

(धर्मेंद्र उपाध्याय)

अधीक्षक (अपील्स),

केंद्रीय कर, अहमदाबाद

By R.P.A.D.

To,

1. The Dy. /Asstt. Commissioner,
CGST, Division-Kalol,
Gandhinagar Commissionerate.
2. M/s. Ratnamani Metals & Tubes Ltd.,
Plot No. 3306 to 3309,
GIDC, Phase-IV,
Chhatral,
Taluka-Kalol, Gandhinagar

Copy to:

1. The Chief Commissioner of Central Tax, Ahmedabad Zone.
2. The Commissioner of Central Tax, Gandhinagar.
3. The Additional Commissioner, Central Tax (System), Gandhinagar.
4. The Asst./Dy. Comm'r, Central Tax, Division-Mehsana, Gandhinagar.
5. Guard File.
6. P.A.

