

**Peico Electronics and Vs. Commr. of Customs**

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**SooperKanoon Citation :** [sooperkanoon.com/14181](http://sooperkanoon.com/14181)

**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Aug-20-1998

**Reported in :** (1999)(63)ECC39

**Appellant :** Peico Electronics and

**Respondent :** Commr. of Customs

**Judgement :**

1. This appeal is directed against the order dated 21-5-1991 of the Commissioner (Appeals), Mumbai by which he had held that the rejection of the refund claim of the appellant's for exemption under Notification No. 347/86 is in order and upheld the Assistant Commissioner's order.

2. The appellants filed a refund claim on the ground that they are eligible for exemption under Notification 347/86 in respect of ink imported by them against the bill of entry on which duty was paid on 12-9-1986. The ink' was claimed as raw material for the manufacture of their electronics products and the end use was certified by the Central Excise authorities. The Assistant Commissioner of Customs rejected their claim for the reason that they have not submitted the necessary certificate for the duty exemption from DGTD as specified in Clause No.1 of the Notification. The Commissioner (Appeals) held that the benefit of the Notification can be given to the appellants and held that the ink imported by them is covered by Serial 24(i) of the table annexed to the Notification 347/86 but the Commissioner (Appeals) found that the certificate from the DGTD produced by them did not specifically contain the recommendation for the grant of exemption by

that authority.

Therefore the certificate was held to be not fulfilling the condition in the Notification. The appeal was therefore rejected.

2. None is present for the appellants despite notice. They have stated that prior to July 1989 duty concession certificate was based on proforma by the DGTD authority and that as an importer they had no option but to submit application for duty concession only as per proforma announced by the DGTD authority. They have also pointed out that the DGTD has themselves amended the concession certificate since July 1989 to include the specific sentence to recommend the benefit of the customs notification to the applicants.

3. Heard Shri Kumar, the Id. DR who pointed out that the wordings of the Notification required there should be specific recommendation for the benefit of the Notification by the DGTD and in the absence of any specific recommendation the appellants are not eligible for exemption.

4. The rival contention have been considered. The question is of exemption under Notification 347/86 which is conditional upon production of certificate from DGTD or from Department of Electronics recommending the exemption. The Commissioner (Appeals) has held that the certificate produced did not contain any specific recommendation by the DGTD for granting exemption to the appellant. But at the same time the Commissioner has given a finding that the ink imported by the appellants is covered by the Notification Serial No. 24(i). Therefore it is clear that even according to the lower authority the imported goods falls within the ambit of the Notification for exemption. The next question is the how far the condition regarding DGTD certification is satisfied. There is, on record, a certificate which has been obtained by the appellants as per the proforma prescribed by DGTD themselves for issue of such certificate. Therefore, if the certificate issued by that authority has ambiguity in recommending exemption in the proforma, it will be reasonable to hold that the appellants cannot be made to suffer on that account. It is also submitted that subsequently the DGTD had amended the proforma to include such recommendation in the certificate. Therefore a broader view is warranted in the interpretation of the appellants eligibility to this exemption.

Accordingly we hold that the appellants are eligible for the exemption and hence eligible for the refund claimed by them. The appeal is allowed. The appellants will be entitled to consequential relief as per law.

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