

**Flex Industries Ltd. Vs. Cce**

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

**Decided On :** Apr-12-2005

**Reported in :** (2005)(101)ECC563

**Judge :** A T V.K., P Bajaj

**Appellant :** Flex Industries Ltd.

**Respondent :** Cce

**Judgement :**

1. The issue involved in these 2 appeals filed by M/s Flex Industries Ltd., is whether the benefit of Notification No. 108/95-CE dated 28.8.95 is available to the goods manufactured and cleared by them.

2. Shri K.K. Anand, learned Advocate, submitted that the Appellants manufacture machines and parts thereof, Structures, Reservoirs Tanks; that they procured an order from M/s. Triveny Engg. & Inds. Ltd. for supply of some machinery items on their behalf to a canal project namely, Mini Hydel Project on the Abohar Branch, Canal in the state of Punjab which was implemented by the project authority namely Punjab Energy Development Agency; that the said project was financed by the World Bank, an International Organization; that Notification No.108/95 exempts all excisable goods from payment of Excise duty when supplied to the United Nations or international organization for their office use or supply to the project financed by the said United Nations or an International Organization and approved by the Government of India subject to the condition that before

clearance the manufacturer produces before the jurisdictional Asst. Commissioner of certificate from the United Nations or an International Organization that the goods are intended for official use or are to be supplied to a project financed by United Nations/International Organization and the said project has been duly approved by the Government of India. He, further, submitted that the Revenue has disallowed the benefit of exemption Notification as they had not produced the certificate from International Organization as required under the Notification; that the Commissioner (Appeals) has relied upon the decision of the Tribunal in their own case as reported in 2000(39) RLT 533 (CEGAT).

3. The learned Advocate submitted that they have produced the necessary certificate from the Project Authority i.e. Punjab Energy Development Agency which is the agency of State Government of Punjab; that they have also furnished the copies of relevant correspondence establishing the fact that the project in question is funded by an International Organization which has been approved by the Government of India; that despite sincere efforts made by them the requisite certificate could not be produced for the reason that there was no such practice of issuing such type of certificate directly from the International Organization and there was standard practice of clearing the goods claiming exemption on the basis of certificate issued by the concerned project authority; that this is also apparent from the decision of the Tribunal in the case of Bindawala electrical Industries v. CCE, Kolkatta-1, 2002 (50) RLT 824 (CESTAT) wherein it has been held by the Tribunal that the Notification has been issued to reduce the cost of project financed by International Organization and it would be unreasonable to reject the eligibility certificate issued by a duly authorized person and approved by the Government of India as it would be unreasonable to reject the eligibility certificate issued by a duly authorized person and approved by the Government of India as it would amount to defeating the purpose of notification. The learned Advocate submitted that similarly in the case of Automatic Electric Ltd. v. CCE, Bombay-2004 (65) RLT 203 (CESTAT) wherein the Tribunal has allowed the benefit of notification No.108/95 on the basis of certificate given by Ministry of Power, Government of India. Finally the learned Advocate submitted that Notification No.108/95 was subsequently amended by notification No.7/98-CE dated 2.6.98 by which it was provided that the certificate is to be given by Nodal Ministry in the

Government of India; that as per this amendment supplies made by them in July 1998 are eligible for benefit of the notification as they have produced the certificate from Punjab Energy Development Agency. Alternatively, the learned Advocate, submitted that as coordinate Benches of the Tribunal have allowed the benefit of exemption under Notification No.108/95 the matter may be referred to the Larger bench for resolving the conflict between different Benches.

4. Countering the arguments Shri U. Raja Ram, learned D.R., submitted that the conditions imposed in the Notification is very specific and it's pre-requisite that certificate is produced by a manufacturer from the United Nations or an International Organization; that certificate given by any other agency cannot substitute the condition of certificate as mentioned in the Notification. He relied upon the judgment in the case of Eagle Flask Industries Ltd. v. CCE, Pune-2004 (64) RLT 363 (SC) wherein it has been held that the condition of making a declaration and giving an undertaking in Notification No.11/88 is not an empty formality as it is the foundation for availing the benefit of notification and if these conditions are not fulfilled the benefit of notification will not be available. The learned D.R. also mentioned that the decision in the case of Automatic Electric Ltd. is not relevant as it pertains to the period after the amendment has been made in the notification and the certificate was produced by the Appellants therein as per the provisions contained in the amended notification.

5. We have considered the submissions of both the sides. The exemption provided in Notification No.108/95-CE is subject to the conditions specified in the proviso to Notification which reads as under:- "Provided that before clearance of the said goods, the manufacturer produces before the Asst. Commissioner of Central Excise having jurisdiction over his factory, a certificate from the United Nations or an International Organization that the said goods are intended for official use by the said United Nations or the said International Organization or are to be supplied to a project financed by the said United Nation or the said International Organization and the said project has duly been approved by the Govt. of India." A reading of the said proviso makes it very apparent that the exemption under the notification is available on production of the certificate before clearance of the goods. It is not in dispute that in the present matter the certificate from

International Organization which is financing the project in question has not been produced and as such the condition pre-requisite has not been complied with. This was the view expressed by the Tribunal in the Appellants' own case as reported in 2000 (39) RLT 533 in respect of supplies for different periods. The Tribunal did not agree with the Appellants in the said decision that "this was only a technical requirement and for non-complying with the same they should not be penalized." The Tribunal also observed therein that "it has not been denied by the Appellants that the jurisdictional Central Excise Officer directed them not to clear the goods without payment of duty till the condition of Notification i.e. requirement of producing the certificate from the World Bank is fulfilled." The necessity to comply with the condition contained in the Notification has recently been considered by the Apex Court in the case of Eagle Flask Industries Ltd. (supra) wherein the Supreme Court has observed that "the conditions set out in the Notification is not an empty formality. It is the foundation for availing the benefit under the notification. It cannot be said that they are procedural requirements, that no consequences attached for non-observance. The consequences are denial of benefit under the notification. For availing the benefit under the exemption notification, conditions have to be strictly complied with." In view of the judgment of the highest court of the land, the two decisions of the Tribunal, relied upon by the learned Advocate, cannot be followed for granting exemption under the notification when the conditions specified in the Notification has not been complied with. The learned Advocate has also not mentioned that any stay has been granted to the Appellants against the operation of the Tribunal's earlier Order in the case of the Appellants. Though he did mention that an appeal has been filed before the Hon'ble High Court.

6. Notification No.108/95 was amended by Notification No.7/98 and as per the amended notification the manufacturer has to produce a certificate from the nodal ministry in the Government of India. Even in respect of supplies made by the Appellants in the month of July, 1998 i.e. after the amendment, the benefit of Notification is not available as they have not produced the certificate from the nodal ministry in the Government of India. They have only produced the certificate from the project authority, Punjab Energy Development Agency which is not the nodal ministry of the Govt. of India. Accordingly, we find no merit in both the

appeals which are rejected.

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