

## **Madras HC denies exemption benefit w.r.t. imports made prior to registration under Rules**

**Synopsis:** The Hon'ble Madras HC in **Civil Miscellaneous Appeal No. 1699 of 2017 dated January 6<sup>th</sup>, 2020**, allowed the Revenue's appeal to hold that to avail the exemption of duty under any Notification, the Rules and Regulations and the conditions prescribed therein have to be strictly adhered and thus, the Assessee is not entitled to claim exemption in respect of import of goods made prior to the date of Registration under Rule 3 of the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996 ("**Customs Import Rules 1996**").

### **Facts:**

The Commissioner of Customs, Chennai ("**the Appellant**" or "**Revenue**") has filed an appeal in the Hon'ble Madras High Court ("**Madras HC**") against the **Final Order No. 41210 of 2015 dated September 14<sup>th</sup>, 2015** passed by the CESTAT Chennai in favour of Medreich Sterilab Ltd. ("**the Respondent**") vide **Civil Miscellaneous Appeal No. 1699 of 2017**, whereby the Hon'ble Tribunal dismissed the Appeal filed by the Appellant in favour of the Respondent M/s. Medreich Sterilab Limited ("**the Company**" or "**the Assessee**").

The Tribunal upheld the order of the lower appellate authority and thereby granted the exemption claimed by the Company, while observing that Rule 3 & 4 of the Customs Import Rules 1996 were only procedural in nature. Therefore, though the Application for registration under Rule 3 was filed later on and the Registration granted to the Respondent to avail the exemption from payment of duty in respect of import under Bill of Entry No. 550344 dated June 28<sup>th</sup>, 2003 under which goods imported in question which were cleared by the Customs Authority on June 30<sup>th</sup>, 2003, prior to the date of Registration under Rule 3 on July 14<sup>th</sup>, 2003, the Company should be granted the exemption claimed.

### **Revenue's Contention:**

The Tribunal has erred in holding that the requirement of Registration under Rule 3 and 4 of the aforesaid Rules of 1996 were only procedural and the import of goods in question prior to the registration on July 14<sup>th</sup>, 2003 could not entitle the Company to avail the exemption of duty on the basis of such registration and therefore the Tribunal has erred in granting such exemption in favour of the Assessee.

### **Assessee's Contention:**

The Certificate was issued by the Superintendent of Central Excise allowing the Company to avail such exemption with respect to the same Bill of Entry No. 550344 dated June 30<sup>th</sup>, 2003 on July 3<sup>rd</sup>, 2003 itself and therefore even though the registration of Assessee under 1996 Rules was done later on July 14<sup>th</sup>, 2003, the Assessee had rightly availed the said exemption

and the Rules in question are only directory in nature and therefore the order of the learned Tribunal is justified in accordance with law.

**Issue involved:**

Whether the Assessee is eligible to avail the benefit of exemption of duty for the pre-registration period?

**Held:**

The Hon'ble Madras HC passed the following order in the matter of ***Civil Miscellaneous Appeal No. 1699 of 2017 dated January 6<sup>th</sup>, 2020:***

- **The Tribunal has erred in holding that the Rules are merely procedural or directory in nature and upholding the grant of exemption to the Assessee** in respect of Bill of Entry No. 550344 dated June 28<sup>th</sup>, 2003 by which the goods were imported and cleared on June 30<sup>th</sup>, 2003. The Certificate issued by the Superintendent of Central Excise, relied upon by the learned counsel for the Assessee is not under the aforesaid 1996 Rules but it is only a Certificate that the Assessee has not availed the CENVAT Credit on that consignment and that Certificate has nothing to do with the 1996 Rules in question.
- **We do not see any justification for the learned Tribunal to hold that these Rules are only procedural or directory in nature and therefore it could be applied for the import made at prior point of time. Then, the very purpose of Rules and requirement of the Assessee to apply under Rule 4 for the intended imports in future would be frustrated, if these Rules were to be applied retrospectively to the imports already made.** There was no question of substantial compliance by the Assessee. The very initiation of procedure of registration and application was not undertaken by the Assessee in the present case.
- **It is well settled law that to avail the exemption of duty under any Notification, the Rules and Regulations and the conditions prescribed therein have to be strictly adhered and there is no place for equity or intendment in the interpretation of the taxing Statutes.** By holding that the Rules of 1996 are only procedural or directory in nature, the learned Tribunal has frustrated the very purpose of Rules 3 and 4 in question by holding that the Assessee is entitled to the exemption for import made on June 28<sup>th</sup>, 2003. There is no dispute before us that the registration under Rules 1996 was granted in favour of the Assessee only on July 14<sup>th</sup>, 2003 and not at any point

of time prior to that and therefore we cannot uphold the order passed by the learned Tribunal.

The Hon'ble Madras HC conclusively allowed the appeal filed by the Revenue and set aside the order passed by the learned Tribunal consequently closing the miscellaneous petitions.

**Important Provisions:**

**Rule 3 of Customs Import Rules, 1996 : Registration**

*(1) A manufacturer intending to avail of the benefit of an exemption notification referred in sub-rule (1) of rule 2, shall obtain a registration from the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise having jurisdiction over his factory.*

*(2) The registration shall contain particulars about the name and address of the manufacturer, the excisable goods produced in his factory, the nature and description of imported goods used in the manufacture of such goods.*

*(3) The Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall issue a certificate to the manufacturer indicating the particulars refer to in sub-rule(2).*

**Rule 4 of Customs Import Rules, 1996 : Application by the Manufacturer to obtain the benefit**

*(1) A manufacturer who has obtained a certificate referred to in sub-rule (3) of rule 3 and intends to import any goods for use in his factory at concessional rate of duty, shall make an application to this effect to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise indicating the estimated quantity and value of such goods to be imported, particulars of the notification applicable on such import and the port of import.*

*(1A) The manufacture may, at his option, file the application specified under sub-rule (1), either in respect of a particular consignment, or indicating his estimated requirement of such goods for a period not exceeding one year.*

*(2) The manufacturer shall also give undertaking on the application that the imported goods shall be used for the intended purpose.*

*(3) The application shall be countersigned by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise who shall certify therein that the manufacturer is registered in his office and has executed a bond to his satisfaction in respect of end use of the imported goods in the manufacturer's factory and indicate the particulars of such bond."*

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