IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 20TH DAY OF NOVEMBER 2015/29TH KARTHIKA, 1937

WP(C).No. 18999 of 2015 (Y)

PETITIONER(S):

M/S.DYNAMIC TECHNO MEDICALS PVT. LTD.
P.B.NO.45, ASHOKAPURAM, ALUVA 683 101
REPRESENTED BY ITS GENERAL
MANAGER (PLANNING)MR.A.M.JATHAVEDAN.

BY ADVS.SRI.M.GOPIKRISHNAN NAMBIAR
SRI.P.GOPINATH
SRI.P.BENNY THOMAS
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS

RESPONDENT(S):
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1. UNION OF INDIA
REPRESENTED BY ITS REVENUE SECRETARY
MINISTRY OF FINANCE, NEW DELHI 110 004.

2. THE COMMISSIONER OF CUSTOMS
CUSTOMS HOUSE, WILLINGTON ISLAND, KOCHI-682 009.

3. THE ASSISTANT COMMISSIONER OF CUSTOMS (GR VII)
OFFICE OF THE COMMISSIONER OF CUSTOMS, CUSTOMS HOUSE
WILLINGTON ISLAND, KOCHI-682 009.

4. THE DEPUTY COMMISSIONER OF CENTRAL EXCISE
COIMBATORE IV DIVISION, 1237A & B, ELGI BUILDING
TRICHY ROAD, COIMBATORE 641 018.

R1-R4 BY ADV. SRI.JOHN VARGHESE,SC,CEN.BOARD OF EXCIS
R BY SRI.THOMAS MATHEW NELLIMOOTTIL,SC,CB EX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 18999 of 2015 (Y)
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APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 - TRUE COPY OF THE PURCHASE ORDER NO.CP/13-14/0005 DATED 05.03.2013 ISSUED BY THE PETITIONER TO M/S.METEC GMBH, AUSTRIA.

EXT.P2 - TRUE COPY OF THE AUTHORIZATION DATED 05.03.2013 AND THE ACCOMPANYING LICENSE ISSUED TO THE PETITIONER BY THE ASSISTANT DIRECTOR GENERAL OF FOREIGN TRADE KOCHI

EXT.P3 - TRUE COPY OF THE INVOICE NO.420135 DATED 03.04.2013 ISSUED TO THE PETITIONER BY M/S. METEC GMBH, AUSTRIA

EXT.P4 - TRUE COPY OF THE BILL OF ENTRY NO.2255865 DATED 28.05.2013 FILED BY PETITIONER FOR HOME CONSUMPTION AND CLEARED THE GOODS UNDER THE EPCG SCHEME, ON PAYMENT OF THE DUTY APPLICABLE AS PER THE SCHEME, BEING AT THE RATE OF 3%.

EXT.P5 - TRUE COPY OF THE APPLICATION DATED 22.07.2013 SUBMITTED BY THE PETITIONER BEFORE THE JURISDICTIONAL SUPERINTENDENT OF CENTRAL EXCISE OF THE PETITIONER'S UNIT AT SULUR, COIMBATORE.

EXT.P6 - TRUE COPY OF THE INSTALLATION CERTIFICATE OC NO.192/2013 DATED 29.07.2013 ISSUED TO THE PETITIONER BY THE SUPERINTENDENT OF CENTRAL EXCISE-IV F RANGE SULUR, COIMBATORE.

EXT.P7 - TRUE COPY OF THE COMMUNICATION DATED 01.08.2013 ISSUED BY THE PETITIONER TO THE OFFICE OF THE 3RD RESPONDENT.

EXT.P8 - TRUE COPY OF THE NOTICE DATED 19.09.2013 ISSUED TO THE PETITIONER BY THE APPRAISING OFFICER ATTACHED TO THE OFFICE OF THE 4TH RESPONDENT.

EXT.P9- TRUE COPY OF THE NOTIFICATION NO.103/2009 DATED 11.09.2009

EXT.P10 - TRUE COPY OF THE REQUEST DATED 01.10.2013 SUBMITTED BY THE PETITIONER BEFORE THE SUPERINTENDENT OF CENTRAL EXCISE, SULUR, COIMBATORE.

EXT.P11 - TRUE COPY OF THE REQUEST DATED 18.10.2013 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

CONTD .. 2 ..

WP(C).No. 18999 of 2015 (Y)

EXT.P12 -	**TRUE COPY OF THE NOTICE DATED 18.11.2014 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.**
EXT.P13 -	**TRUE COPY OF THE FOR TIME DATED 01.12.2014 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**
EXT.P14 -	**TRUE COPY OF THE REQUEST FOR TIME DATED 17.12.2014 FILED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**
EXT.P15-	**TRUE COPY OF THE REQUEST DATED 05.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT.**
EXT.P16 -	**TRUE COPY OF THE COMMUNICATION DATED 27.01.2015 ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT.**
EXT.P17 -	**TRUE COPY OF THE REQUEST DATED 11.02.2015 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.**
EXT.P18 -	**TRUE COPY OF THE CIRCULAR NO.14/2008-CUS DATED 26.09.2008 ISSUED BY THE CENTRAL BOARD OF EXCISE & CUSTOMS.**
EXT.P19-	**TRUE COPY OF THE NOTICE DATED 25.02.2015 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT.**
EXT.P20 -	**TRUE COPY OF THE CERTIFICATE DATED 31.01.2015 ISSUED TO THE PETITIONER BY M/S.METEC GMBH, AUSTRIA**
EXT.P21 -	**TRUE COPY OF THE INSTALLATION CERTIFICATE DATED 18.02.2015 ISSUED BY THE CHARTERED ENGINEER TO THE PETITIONER.**

RESPONDENT(S)' EXHIBITS

EXT.R2(A)	**COPY OF THE NOTIFICATION NO.103.2009 DTD. 11.09.2009 ISSUED BY THE 1ST RESPONDENT.**
EXT.R2(B)	**COPY OF THE BOND EXECUTED BY THE PETITIONER WITH THE 4TH RESPONDENT DTD. 21.5.13.**
EXT.R2(C)	**COPY OF THE LETTER DTD. 25.11.13 ISSUED BY THE ASSISTANT COMMISSIONER TO THE 2ND RESPONDENT.**

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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W.P.(C) No.18999 of 2015 - Y

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Dated this the 20th day of November, 2015

J U D G M E N T

The petitioner, a manufacturer of ECG Electrode machines, medical devices and accessories is concerned with the denial of exemption granted under the Export Promotion Capital Goods (EPCG) Scheme.

2. The petitioner imported a production line for manufacture of ECG electrodes, the purchase order of which is produced at Ext.P1 and the bill of entry at Ext.P4. The petitioner was granted an authorisation to make the said import under EPCG concessional duty of 3% as is seen from Ext.P2. The petitioner admittedly imported goods and by Ext.P4 cleared the same from the Port of Entry. As is contemplated by the EPCG Scheme, an importer granted an authorisation under the Scheme has to produce a certificate from the "jurisdictional Central Excise

Authority" confirming installation of capital goods within six months from the date of completion of import to the Regional Authority when alone lower duty paid crystallises into a concession under the EPCG Scheme. The working of the EPCG Scheme to put in brief, is to give benefits to an importer insofar as allowing import on a concessional rate provided export of goods is effected to the extend stipulated in the EPCG Scheme.

3. A non-production of the certificate from the jurisdictional Central Excise Authority or even a subsequent omission to carry out obligation of export as stipulated in the EPCG Scheme would require the importer to pay the duty at its exigible rate. The petitioner herein imported the goods and installed the same at its factory at Sulur, Coimbatore. The petitioner also filed an application before the jurisdictional Central Excise Authority as is indicated at Ext.P5, the Superintendent of Central Excise, IV F Range, Sulur, Coimbature. The Superintendent is said to have issued Ext.P6 installation certificate on 29.07.2013 well within the time stipulated, since the

import was made on 28.05.2013. The petitioner immediately thereafter forwarded the certificate of installation produced at Ext.P6 to the Regional Authority, the 3rd respondent herein by Ext.P7 covering letter.

4. However, the 3rd respondent refused to consider the certificate, as one contemplated by EPCG Scheme, for reason of the same having not been issued by the Assistant/Deputy Commissioner of Central Excise. The petitioner then made an application before the Superintendent of Central Excise for a certificate from the Assistant/Deputy Commissioner of Central Excise as is evident from Ext.P10. The same was declined for the reasons which have been quoted in Ext.P12, which was again issued by the 3rd respondent. A reading of Ext.P12 would indicate that the Assistant/Deputy Commissioner of Central Excise Coimbatore IV Division had informed the Regional Authority that there is no identifiable mark or label either in the goods, said to have been imported or in the examination report issued by this office and the genuineness of the goods said to

have been installed could not be confirmed at their end.

5. The learned counsel for the petitioner would contend that there would be no identifiable mark, since what was imported was a production line and same had to be assembled and installed in the factory premises. The further contention raised by the petitioner is that, the EPCG Scheme pointedly speaks of a certificate from the jurisdictional Central Excise Authority; and the clarificatory Circular of the Central Board of Excise and Customs (C.B.E.C) puts it in the right perspective; by the guidelines issued for issuance of installation certificate for capital goods covered under the EPCG Scheme.

6. The petitioner's contention is that even as per the guidelines issued by the C.B.E.C, the Superintendent of Central Excise has to verify the details of capital goods installed in the factory with the details of the EPCG authorization and if the details are found to be in order, the installation certificate has to be issued immediately at any event, not later than 30 days. The non-issuance of certificate or the rejection of the same, if not

intimated within 30 days there is also provided, a deemed issuance of certificate.

7. The petitioner's contention primarily is that since the EPCG Scheme speaks of only a certificate of the jurisdictional Central Excise Authority, the one issued by the Superintendent of Central Excise is perfectly in order. The petitioner would also contend that if at all the certificate is found to be not in order, then the petitioner having not been communicated of any discrepancies, with respect to the exemption claimed, petitioner ought to be deemed to have been issued with such a certificate.

8. The learned Standing Counsel appearing for the official respondents however would contend strict construction of the provision for exemption based on the decision reported in **Novopan India Ltd.** v. **Collector of C.EX. And Customs, Hyderabad [1994(73) E.L.T 769 SC].** The learned Standing Counsel would specifically refer to notification No.103 of 2009 produced along with the counter affidavit, which mandates that

the certificate has to be issued by the Assistant/Deputy Commissioner of Central Excise. Reference is also made to Ext.R2 (b) agreement signed by the petitioner undertaking that such a certificate would be produced within the time stipulated in the EPCG Scheme.

9. Essentially, it is to be noticed that the EPCG Scheme speaks only of production of a certificate from the jurisdictional Central Excise Authority confirming the installation of capital goods at the factory or premises within a period of six months from the date of entry. The Circular of the Central Board produced at Ext.P18 says so in clause (c) and (d):-

> (c) The Superintendent of Central Excise shall verify the details of capital goods installed in the factory with the details on the EPCG authorisation and the application made by the licence holder to the Licensing Authority (ANF 5A(HBP, VOL.I)] in this regard. Specifically, apart from verifying the description, quantity, value etc it may also be verified that the capital goods have been installed in the premises whose address is given in the application made to the licensing authority. If the details are found to be in order, the installation certificate shall be issued immediately and in any case not later than thirty days from the date of receipt of intimation under clause (b) above. If the installation certificate is not issued within 30 days of the dated acknowledgment, it shall be

> deemed that the capital goods have been installed at the declared address.
>
> (d) In case, the Superintendent of Central Excise finds any discrepancy during the verification, the acknowledgment issued to the assessee as per the clause (b) above shall be recalled and the discrepancy shall be intimated immediately to the Assistant Commissioner/Deputy Commissioner, in charge of the Central Excise Division who shall immediately inform all the relevant particulars to.

10. Even going by the Circular of the Central Board it is to be noticed that, it is the Superintendent of the Central Excise, who has to verify the details of the capital goods installed in the factory and if found to be in order, it is for him to issue the installation certificate immediately and in any event not later than 30 days from the date of receipt of the intimation under clause (d) noticed above. The Board also has brought in a deeming provision by which the installation certificate, if not issued within 30 days within the date of acknowledgment, there shall be deemed installation of the capital goods at the declared address.

11. Clause (d) specifically mandates that the Superintendent of Central Excise if detecting any discrepancy

during the verification, the acknowledgment issued to the assessee as per clause (d) above has to be recalled and discrepancy intimated immediately to the Assistant/Deputy Commissioner. Hence going by the EPCG Scheme as also the guidelines issued by the Central Board, it cannot be said that the Assistant/Deputy Commissioner has to issue the certificate.

12. The contention of the Department however is that Ext.R2(a) notification No.103 of 2009 customs is applicable to the EPCG Scheme. Clause 2(i) of the notification specifically refers to the EPCG Scheme and also clause(7), which mandates that certificate of installation of capital goods imported, in the importer's factory or premises, should be issued by the jurisdictional Assistant/Deputy Commissioner of Central Excise. The petitioner too has undertaken by Ext.R2(b) that the said notification would be generally complied with and has specifically by clause (i) of the agreement agreed to prove to the satisfaction of the Deputy Commissioner of Customs that the capital goods imported are installed at the importer's unit and

for such purpose, shall produce a certificate from the jurisdictional Assistant/Deputy Commissioner of Central Excise

13. A reading of the above notification would indicate that the petitioner would have to produce a certificate of the Assistant/Deputy Commissioner of Central Excise for obtaining the permission. However, the issuance of the certificate itself is not in the hands of the petitioner and what the petitioner could do is only apply for the same on the installation of the imported goods being completed. What comes to fore is a lack of co-ordination between the Departments. While the Scheme requires only a certificate from the jurisdictional Central Excise Authority and the CBEC by the guidelines issued clarifies it as a certificate from the Superintendent, the notification No.103 of 2009-Customs stipulates the certificate to be of the Assistant/Deputy Commissioner of Central Excise.

14. The decision of the Hon'ble Supreme Court has to be looked at in that perspective. The Hon'ble Supreme Court held that, the principle that benefit should go to the tax-payer

assessee, in the event of an ambiguity in the taxing statute, cannot be applicable in the case of an exemption clause. This was on the reasoning that, by exemption, a benefit is conferred on an assessee, thus increasing the burden on the other tax-payers and causes loss to the State exchequer. Herein there can be no ambiguity found in the language of the exemption. The ambiguity arises only due to conflicting stipulations made, prejudicing the assessee, insofar as complying with the essential conditions required, for satisfaction of the authority; post-sanction of exemption. It is trite that any exemption notification has to be construed strictly. But however it is equally trite that the strict interpretation is insofar as finding whether an assessee was entitled to the exemption and on finding the assessee to be entitled to such exemption, then there should be a liberal construction of the exemption provisions.

15. In the present case, the grant of authorisation made by the Joint Director General of Foreign Trade at Ext.P2 would indicate that the petitioner is entitled to the concessional

rate of duty under the EPCG Scheme. What remains is the satisfaction of the Commissioner, who grants the exemption, on the basis of the authorisation and on the satisfaction of the imported goods having been installed in the premises of the importer. The petitioner, the importer had approached the jurisdictional Central Excise Authority immediately on such installation being completed by letter dated 22.07.2013 at Ext.P5 within one month of the import. The fact that an installation was carried on by the Superintendent of Central Excise is also evident in Ext.P6. Obviously the same has been carried out on the basis of the provisions in the EPCG Scheme as also the clarification issued by the Board of Central Excise and Customs. The Superintendent of Central Excise, who carried on the inspection also issued Ext.P6 installation certificate as indicated in Ext.P18.

16. Hence it is to be presumed that there was no discrepancy noticed, which would prompt the Inspecting Officer to inform either the Assistant/Deputy Commissioner, Central Excise, to enable recalling authorisation granted to the

petitioner. No fault can be found on the petitioner since the petitioner had applied under the EPCG Scheme and the jurisdictional authority had also verified the same and issued a certificate.

17. The defect alleged by the Customs Department is on the principle that the certificate itself had to be by Assistant/Deputy Commissioner of Central Excise. The petitioner having applied in time and verification having been carried out by the Superintendent of Central Excise as mandated by the Central Board, the issuance of certificate was the duty of the Excise Department and no defect can be found on the petitioner for having not produced the certificate of the Assistant/Deputy Commissioner. The Excise Department in their wisdom thought it fit to issue a certificate by the Inspecting Officer, the Superintendent of Central Excise. If at all the same is defective, then it can only be deemed to be an inaction on the part of the Excise Department to issue a certificate within 30 days, which would enable the petitioner to avail of the exemptions even

without the certificate as per the guidelines issued by the CBCE.

18. It has to be noticed that the installation even now is not suspected by the Assistant/Deputy Commissioner of Central Excise. But the certificate has been declined only for the reason that, at this distance of time, he is unable to verify whether the installed goods is the one, which is imported. In fact the Assistant/Deputy Commissioner of Central Excise could have verified with the Superintendent of Central Excise since even going by the guidelines, it is for the Superintendent of Central Excise to verify the installation. The lackluster, conflicting claims, which to a disinclination to shoulder the responsibility by the Departments under the Government enjoined to be the machinery of exemption, cannot result in the frustration of a perfectly legal claim for benefits conferred under an exemption notification.

19. In any event, this Court cannot find any defect in the matter of the exemption claimed by the petitioner under the EPCG Scheme and the rejection of the claim of exemption by the

3rd respondent is found to be bad. The petitioner is declared, on facts, to be entitled to the exemption on the deemed issuance of the installation certificate for the goods imported by Ext.P4 bill of entry. The orders at Exts.P12 and P19 would stand set aside. It is made clear that this Court has not looked into whether the petitioner had satisfied the other obligations for export as stipulated in the EPCG Scheme, which the assessing authority would be entitled to look into.

The writ petition would stand allowed. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB/21/11/2015

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P.A to Judge.