

S.MURUGAPPAN

ADVOCATE, HIGH COURT

ASSISTED BY:

K.NANCY, B.COM., B.L. (HONS.),

M.S.HARSHA PRABHU, L.L.M.

CONSULTANTS:

GST, CUSTOMS, FOREIGN TRADE LAWS,
FOREIGN EXCHANGE MANAGEMENT ACT.

OPINION

1. **QUERIST:**

M/s. Nippon Express (India) Pvt. Ltd.,
No.B1, 3rd & 4th Floor,
Thiru-Vi-Ka Industrial Estate, Guindy,
Chennai – 600 032.

2. **FACTS:**

One of the querist's clients would be availing notification benefit vide Notification No.84/97 for import clearance for projects financed by United Nations or International Organisations. Querist understands that import customs clearance under Notification No.84/97 will not come under Project Import Regulations 1986. In this regard, querist has made available a copy of their scope of work and a copy of Notification No.84/97.

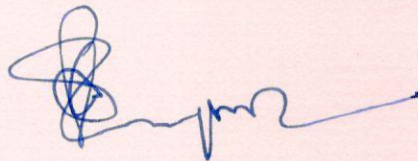
3. **QUERY:**

In this connection, the querist would like to have clarification on the following.

- 3.1 Whether clearance under Notification 84/97 comes under Project Import Regulations 1986 to follow the procedure prescribed in the said regulations for project registration and finalisation etc.
- 3.2 Customs procedure to be followed by them for clearance by availing Notification No.84/97.
- 3.3 Procedure to be followed for project intimation, registration and closure to customs, if benefit is availed under Notification No.84/97.
- 3.4 What are the duty exemptions available under the subject notification.
- 3.5 Customs duty reimbursement (CDR) process in view of full payment of duty in the absence of Customs Duty Exemption Certificate (CDEC) under customs Notification No.84/97 as mentioned by the querist's client in the scope of work.

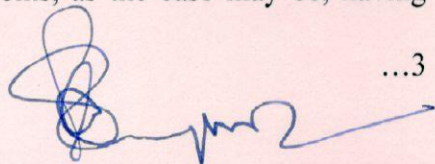
4. **OPINION:**

- 4.1 A copy of Notification No.84/97-Customs dated 11.11.1997, as amended, is attached to this opinion.



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- 4.2 It is to be noted that this is a standalone notification which provides for exemption from whole of customs duty leviable on the goods imported in terms of the First Schedule to the Customs Tariff Act and whole of Special Additional Duty leviable in terms of Section 68 of Finance Act, 1996. The only condition stipulated is that at the time of clearance of the goods, the importer has to produce a certificate as indicated in the notification from any of the authorities enumerated in Sl.Nos.(i) to (iii) of the proviso. There are no other conditions attached to the notification. As such, there may not be any need to register any project for availing the benefit under this notification. Once the certificate from the competent authority in proper form is provided for the goods imported, then, in the normal course, benefit of exemption can be claimed in terms of the above notification.
- 4.3 It is also to be noted that this notification provides exemption from whole of customs duty leviable in terms of the first Schedule to the Customs Tariff Act as well as Special Additional Duty of Customs. On the other hand, in respect of project imports covered by heading 9801, the statutory rate of duty is 10%. There are projects specified in the Tariff schedule itself such as industrial plant, power project etc. Also, in terms of Notification 42/96-Customs dated 23.07.1996 several other projects have been notified as eligible for project import benefit under the above Tariff entry 9801. It is also to be seen that in terms of Notification 50/2017-Customs dated 30.06.2017, as amended, certain projects falling under 9801 are provided with total exemption i.e., 'NIL' duty.
- 4.4 On the other hand, it is to be noted that in the present case already in terms of Notification 84/97 under reference, 'Nil' customs duty is available.
- 4.5 The notification as on date specifies exemption from customs duty leviable in terms of the first Schedule to the Customs Tariff Act. As such, there does not appear that there is exemption from payment of applicable duty equal to IGST in terms of Section 3 of Customs Tariff Act 1975. Hence, depending on the merits and the classification of the goods imported, IGST will be applicable at different rates. It is also to be noted that even under project import, under heading 9801, 18% IGST is leviable at present and there is no total exemption.
- 4.6 With regard to submission of exemption certificate at a later date for customs duty reimbursement, in our view, adopting such a procedure will not be advisable and it can lead to rejection of the claim for reimbursement or refund of the customs duty paid at the time of import of the goods in the absence of eligibility certificate issued under the above notification.
- 4.7 The notification stipulates "Provided that the importer, at the time of clearance of the goods, produces before the Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, having jurisdiction,".

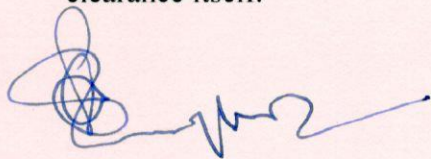
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- 4.8 Thus, the requirement of the notification is submission of a certificate as contemplated in the above notification at the time of clearance of the goods.
- 4.9 In the past, appellate authorities have taken a stand that subsequent submission of the certificate need not be rejected and still benefit can be extended since this requirement is only procedural in nature. However, it is to be noted that this interpretation may not hold good as of now in the light of the judgment given by a constitutional Bench of the Supreme Court in the case of *Dilip Kumar & Company* reported in 2018 (361) E.L.T. 577 (S.C.). In this case, the constitutional Bench has held that notifications issued under taxing statute have to be interpreted strictly and any ambiguity in the notifications should be decided in favour of the revenue and not in favour of the individual. Specifically, in para 25 of the above judgment, the following observations have been made.

“25. We are not suggesting that literal rule de hors the strict interpretation nor one should ignore to ascertain the interplay between ‘strict interpretation’ and ‘literal interpretation’. We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well-settled that in a taxation statute, there is no room for any intendment: that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute.”

A copy of the judgment also is attached for ready reference.

- 4.10 In the light of the above, in our view, it will be advisable to submit the eligibility certificate issued by the competent authority at the time of clearance itself.



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Disclaimer:- The above opinion is provided based on the information and documents made available to us by the querist and further based on the laws and rules prevalent as on date and the understanding of such provisions by the author and is meant for the private use of the person to whom it is provided without assuming any liability for any consequential action taken based on the views expressed here.