CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Customs Appeal No. 28234 of 2013

[Arising out of Order-in-Original No. 27/2012-13 dated 08.02.2013 passed by the Commissioner of Central Excise and Service Tax, Bangalore]

M/s. Triveni Engineering & Industries Ltd.
'Kailash', 2nd Floor, 26
Kasturba Gandhi Marg
New Delhi .... **Appellant(s)**

VERSUS

The Principal Commissioner of Customs, Bangalore
Airport & Air Cargo Commissionerate
Menzies Aviation, Bobba Building
Devanahalli, Bangalore – 560 300 .... **Respondent(s)**

WITH

Customs Appeal No. 27834 of 2013

[Arising out of Order-in-Original No. 27/2012-13 dated 08.02.2013 passed by the Commissioner of Central Excise and Service Tax, Bangalore]

M/s. ICICI Bank Limited
ICICI Bank Towers
Bandra Kurla Complex
Mumbai – 400 051 .... **Appellant(s)**

VERSUS

The Principal Commissioner of Customs, Bangalore
Airport & Air Cargo Commissionerate
Menzies Aviation, Bobba Building
Devanahalli, Bangalore – 560 300 .... **Respondent(s)**

APPEARANCE:

Ms. Purvi Asati and Ms. Shradha Pandey, Advocates for M/s. Triveni Engineering & Industries Ltd. and Mr. Anil Kumar B., Advocate for ICICI Bank Ltd.
Mr. M. Sreekanth, Assistant Commissioner (AR) for the Respondent

CORAM:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order Nos. 20780 - 20781 / 2026

Date of Hearing: 09.12.2025
Date of Decision: 08.06.2026

PER: P.A. AUGUSTIAN

The issue in the present appeals is regarding denial of Exemption Notification No. 84/97-Cus dated 11.11.1997. M/s. Triveni Engineering Industries Ltd. (Appellant No.1) is engaged in the manufacture of sugar in its manufacturing unit located in Deoband, Saharanpur, UP. It has planned to set up a co-generation power project using bagasse as part of its expansion. For the purpose of setting up the said power project, the Appellant has secured a Rs. 250 million funding from ICICI Bank Ltd. (Appellant No. 2), which was part of the Asian Development Bank's (ADB) Urban Environment and Infrastructure Facility Project. Since the project was funded by ADB and approved by the Government of India, the Appellant claimed exemption with respect to the goods imported by it for its co-generation power plant under Notification No. 84/97-Cus dated 11.11.1997 as amended by Notification No. 85/99-Cus dated 06.07.1999, No. 119/99-Cus dated 02.11.1999, No. 75/2001-Cus dated 06.07.2001 and 107/2001-Cus dated 12.10.2001 (hereinafter referred to as "Notification No. 84/97").

2. In terms of the said Notification No. 84/97, the goods imported for the project financed by the Asian Development Bank and the said project being approved by the Government of India, will be exempted from payment of BCD, CVD and SAD, on the production of a certificate from executive head of the Project Implementing Agency and countersigned by the officer not below the rank of Joint Secretary to the Government of India, in the concerned line ministry, certifying that the said goods are required for the execution of the said project. Alleging that certificate produced by various assessee including the Appellant were forged to avail the benefit of said Notification, investigation commenced by DRI alleging that Shri Rakesh Yadav, Junior Finance officer, Department of Economic Affairs, Ministry of Finance,

Government of India had been involved in issuance of such forged PIACs, in association with Shri Nanda Kumar, Proprietor, M/s. Clean Energy Systems. Accordingly show cause notice was issued on 20.07.2005 and Adjudication authority as per the impugned order, denied the benefit of Exemption Notification in respect of the goods imported by the Appellant and confirmed the demand of customs duty, appropriated the amount paid by the Appellant and also held that the goods imported by the Appellant are liable for confiscation. Since the goods are not available with the Department, there is no redemption fine imposed. But equal amount of penalty was imposed on Appellant under Section 114A of the Customs Act and similar penalties was imposed on Appellant No. 2. Aggrieved by said order, present appeals are filed.

3. When the appeals came up for hearing, the Learned Counsel for the Appellant submits that in the instant case, the ICICI Bank, Appellant No. 2 as Project Implementing Authority, issued certificates signed by its Executive Director and countersigned by the Joint Secretary, Department of Economic Affairs, Ministry of Finance. Specifically, the certificates carried the counter signatures of Shri R. Banerji, Joint Secretary (M&I), Ministry of Finance, Government of India, New Delhi, in respect of both excise and customs. The certificates were issued on ICICI Bank's letterhead (Project Implementing Authority) with a forwarding letter from the Ministry of Finance and were attested by jurisdictional customs authorities, thus, the Appellant had no reason to doubt the genuineness of the certificates and under bona fide belief, the Appellant submitted them to the Jurisdictional Customs Range Officer and they have also not pointed out any irregularity and permitted the import of goods without payment of duty for the co-generation project. The Appellant came to know about the forged counter signatures in the certificates issued by Project Implementing Authority only when they appeared before the Directorate of Central Excise Intelligence Authorities. In the above factual matrix, the proceedings initiated by the Department are captured in the table below:

Sl. No.	Date	Particulars
1	01.06.2004 and 11.06.2004	In order to avail the benefit of exemption notifications, the Appellant submitted true copies of Project Implementing Authority (PIA) certificates (impugned certificates) to Ministry of Urban Development (MOUD) for their countersignature as obtained from ICICI Bank through Mr. Nand Kumar (agent) and Mr. Rakesh Yadav.
2	18.06.2004	Bill of Entry No. 633917 filed for import of goods to be used for execution of the co-generation power project.
3	19.06.2004	Bill of Entry No. 634860 filed for import of goods to be used for execution of the co-generation power project.
4	31.08.2004	At the time of investigation by DGGSTI (former DGCEI), the Appellant came to know about forged certificates and paid the differential customs duty to the extent of exemption claimed of Rs. 19,25,026/-.
5	28.10.2004	Central Excise Department issued a Show Cause Notice to the Appellant, ICICI bank and other vendors on the ground that vendors has availed the ineligible exemption benefit under Notification No. 108/95- CE dated 28.08.1995 on the strength of forged certificates.
6	13.12.2004	The Appellant re-submitted the true copies of Project Implementing Authority (PIA) certificates (impugned certificates) to Ministry of Urban Development (MOUD) for their countersignature as obtained from ICICI Bank
7	24.12.2004	MOUD had returned all certificates to the Appellant through ICICI bank.
8	25.02.2005	The Appellant wrote the letter to Under Secretary, Ministry of Finance (MOF) for nomination of Line Ministry as MOUD was not acknowledging themselves as Line Ministry.

9	06.04.2005	After various follow ups with MOF and MOUD and with no results, the Appellant filed a writ petition bearing No. WP/578/2005 before the Hon'ble Allahabad High Court praying for direction with regard to the nomination of correct Line ministry in terms of exemption notifications. The Hon'ble High Court disposed off the writ with the direction that Ministry of Finance should nominate the Line Ministry in terms of said exemption notification.
10	08.08.2005	The letter from Under Secretary, MOF, nominating MOUD as the Line Ministry.
11	16.08.2005	The Appellant had once again submitted the certified true copies of 43 certificates (Customs 2 + Excise 41) to MOUD for their Counter Signatures. MOUD had not shared any acknowledgment for receipt of the documents and did not sign the PIA Certificates.
12	26.06.2005	Commissioner Customs, Bangalore, had issued the impugned show cause notice to the appellant.
13	05.10.2006	The appellant had again approached the Hon'ble Allahabad High Court by filing the Writ Petition No. 1516/2006 in August 2006, seeking for (i) Nominating the Line Ministry & (ii) refund of Excise Duties/Custom duties deposit by them. The Hon'ble High Court vide order dated 05.10.2006 held that UOI should nominate Line ministry within two weeks and thereafter, countersign on the PIACs within one month from the date of receiving from the Appellant. Further proceedings pursuant to the notices issued by the Central Excise Department and Customs Department in this regard shall remain stayed for three months from the date of HC Order. Subsequent to HC Order dated 05.10.2006. MOF and MOUD filed Short Counter Affidavits wherein it was submitted that MOUD will be the 'Line Ministry'.

14	06.09.2010	The Appellant was informed by the MOF that the MOUD continues to be the Line Ministry. The MOUD vide its Office Memorandum dated 22.9.2010 also confirmed that it is the Line Ministry.
15	22.09.2010	Office Memorandum issued by the MOUD seeking facilitation of the verification process from the Department of Economic Affairs for forwarding the PIACs to the Ministry.
16	25.02.2011	Appellant was informed by MOUD that certificates were not available with the Ministry and Department of Economic Affairs have already requested for the same from ICICI bank.
17	01.06.2011	The Department of Economic Affairs issued the office memorandum referring to the letter dated 25.5.2011 issued by MNRE and stating that the equipments imported by the Appellant were required in a bagasse cogeneration power plant.
18	15.07.2011	The Department of Economic Affairs requested the Ministry of Urban Development to take necessary action.
19	31.01.2012	Despite the pendency of the countersignature of the PIA certificate, the Commissioner of Central excise passed an order adjudicating the SCN and confirming the excise duty demand along with interest and penalty.
20	14.05.2012	The Appellant challenged the said order dated 31.01.2012 before the Hon'ble Allahabad High Court vide Writ petition No. 180/2012 and got an interim order vide which the order was stayed.

21	13.08.2012	MOUD vide their order dated 13.08.2012 refused to countersign the PAIC certificates of the Appellant. The Appellant filed a Writ Petition bearing No. 1055/2012 for nomination of Line Ministry & counter signature on PIAC certificates from the Line Ministry.
22	21.06.2013	The SCN dated 20.7.2005 was adjudicated vide the order dated 21.6.2013, wherein the demand of custom duties along with interest and penalty was confirmed.
23	22.10.2013	the Appellant challenged the said order dated 21.6.2013 before the Hon'ble Allahabad High Court vide writ Tax No. 896/2013, which was disposed off on the ground of alternate remedy.
24	29.04.2016	The Hon'ble Allahabad High Court vide Order dated 29.04.2016 combined the writ petition 480/2012 with writ petition 1055/2012 & directed the Joint Secretary of MOUD to examine the matter related to counter signing the PIACs afresh.
25	18.09.2017	The Hon'ble Allahabad High Court held that the fate of this writ petition is dependent upon the issuance of Project Implementing Authorities (In short PIA) Certificate in respect whereof a final decision has been taken vide order dated 29.04.2016 passed in Writ Tax No. 1055 of 2012.
26	29.11.2017	MOUD has informed the Hon'ble Allahabad High Court that Quality Control has been identified as a third agency for verification of capital goods installed at the factory.
27	20.03.2018	Quality Control had inspected the Capital goods at Deoband Premises & submitted their positive report to MOUD.

28	24.07.2018	On request from MOUD, the Appellant has once again submitted the certified True Copy of 43 PIAC to the Ministry for their countersignature.
29	31.10.2018	The Hon'ble Allahabad High Court disposed off the writ petition basis the erroneous understanding the Appellant had received the PIAC.
30	21.12.2018	The Appellant filed the recall application to rectify the error in the Hon'ble HC order.
31	30.10.2025	The Appellant filed an early hearing for the swift listing of the recall application to rectify the error in the Hon'ble HC order.
32	-	The same is pending for hearing before the Hon'ble Allahabad High Court.

4. As regards the finding in the impugned order, Learned Counsel for the Appellant submits that the impugned order confirming the demand along with interest and penalty are on the ground that Appellant had arranged the forgery of countersignature on the certificates issued by the Project Implementing Agency. However, there is no iota of evidence with respect to Appellants involvement in the forgery of PIAC certificate. In Appellants case, the Project Implementing Authority issued certificates signed by its Executive Director and countersigned by the Joint Secretary, Department of Economic Affairs, Ministry of Finance. The said certificates are produced before the Jurisdictional Assistant/ Deputy Commissioner at the time of clearance of the goods as prescribed under the Notification. Appellant No. 1 proceeded with claiming the benefit on a bona fide belief that the impugned certificates were genuine.

5. As regards the certificate countersigned by the concerned Line Ministry, Learned Counsel submits that the requirement is only to certify the assertion made by the Executive Head of the Project Implementing Authority. The content of the certificate is that the said goods are intended to be used in a project financed whether by a loan or grant by

the World Bank, the Asian Development Bank or any other international organization other than listed in the Annexure and the said project has been approved by the Government of India. In Appellant's case, the project undertaken by the Appellant squarely falls under the exemption category and there is no allegation that the goods imported by the Appellant were diverted for any other purpose. The above reasoning has been upheld in the case of **M/s. Rashtriya Chemicals & Fertilizers Ltd., M/s. ICICI Bank Ltd. vs. Commissioner of Customs (Import), Mumbai, 2019 (7) TMI 1987-CESTAT MUMBAI,** wherein on the similar set of facts, it was held that the assessee did not have any role in the act of getting forged signatures on the Project Implementing Authority Certificates and thus, it was held that the Appellant had fulfilled the substantive conditions. Since the condition of obtaining the signature is a matter of procedural law, while the contents of the certificate is substantive law. The relevant portion is extracted below:

> "....4.25 From the definition of Procedure and Procedural Law, as referred to in the above dictionaries, it is quite evident that the manner in which the certificate needs to be produced is nothing but the matter of procedure and procedural law. The manner in which the certificate is signed and countersigned is a matter of procedural law, while the contents of the certificate is substantive law. In this case Commissioner, do not find any discrepancy in the contents of certificate produced by the importer at the time of clearance of the imported goods before the jurisdictional Assistant/ Deputy Commissioner. Since we find that the requirement of counter signature by the Joint Secretary of the concerned Line Ministry is nothing but a matter of procedure, we are not in position, to agree with the findings recorded by Commissioner while disallowing the benefit of exemption..."

6. Learned Counsel further submits obtaining the countersignatures on the PIAC certificate as per the said notification is an impossible condition to be fulfilled by the Appellant. In this regard, it is submitted that the condition pertaining to obtaining the counter-signatures on the

PIAC certificate cannot be imposed on the Appellant as the law has very clearly laid down that "Lex Non Cogit Ad Impossibila" or that "the law does not compel a man to do that which is impossible' as held in **State of Rajasthan Vs. Shamsher Singh, 1985 AIR 1082**. It is further submitted that the said Notification No. 84/97-Cus dated 11.11.1997 as amended was issued in the year 1997 and thereafter, was amended in the year 1999 and 2001, however, still there was no clarity on the aspect of who would be the Line Ministry for the project, whether it would be Ministry of Urban Development (MOUD) or Ministry of Finance (MOF). It is submitted that when there was no clarity with respect to the nominated Line Ministry at the time of importation, a fact which had been noted by the Hon'ble Allahabad High Court in its decision dated 15.10.2006, the condition of countersignatures by the Joint Secretary of Line Ministry could not have been implemented and thus, it becomes an impossible condition to be fulfilled by the Appellant.

7. Learned Counsel further submits that even if it is assumed that Mr. Nand Kumar as an agent of the Appellant and forgery committed by them is acted with his knowledge, assuming the involvement of the Appellant is beyond the scope of the agency by engaging in the act of forgery of the impugned certificates. From the above provisions, it is evident that an agent is a person who is employed by another for doing a particular act. Reliance is placed on the following cases wherein it has been held that if there is nothing on record to doubt the bona fides of the Appellant and the agent has exceeded his authority, then the agent alone would be liable for the wrongful actions:

i. **ITW India Ltd. vs. Commissioner of Customs, Chennai, 2006 (198) ELT 117 (Tri-Bang)**
ii. **JK Synthetics v. CC, Kandla, 2015 (317) E.L.T. 370 (Tri. - Ahmd.)**
iii. **M/s. Aasu Exim Pvt. Ltd. v. CC, Kolkata, 2015 (3) TMI 330 - CESTAT KOLKATA**

iv. **Hetero Drugs v. CC, Airport, Chennai, 2004 (168) E.LT. 211 (Tri. - Bang.) upheld in 2025 (7) TMI 1787-MADRAS HIGH COURT**

8. Learned Counsel further submits that when an allegation is made regarding the forgery in the certificate, the Appellant had expressed their willingness to produce the certificate by approaching the concerned Ministry. However, the delay is only due to the reason that there was no clear instruction regarding the Line Ministry and only due to that reason, the certificate was not produced in time. In this regard, Learned Counsel further submits that even Appellant could have produced a belated certificate, Tribunal held that belated production of certificate cannot be a ground for rejection of exemption, since it is a procedural infraction as held in the following cases:

i. **CCE Vs. Dynaspede Integrated Systems Ltd. - 2002 (147) E.L.T. 541 (Tri.-Chennai)**
ii. **CC, Bangalore Vs. Integra Micro Systems Ltd. - 2005 (180) E.L.T. 174 (Tri.-Bang.)**
iii. **Modern Laboratories Vs. CCE, Indore - 2017 (358) E.L.T. 1179 (Tri.-Del.)**

9. In this regard, Learned Counsel relied on the decision of Tribunal in the matter of **M/s. Rashtriya Chemicals & Fertilizers Ltd.** (supra), in this case, the Tribunal considered that -

> "2.1 Appellant 1 took up a project for upgradation of their High Pressure Nitrate plant in Trombay. The contract was awarded to M/s. Uhde Ltd. (Contractor). This project was approved by the Ministry of Chemical and Fertilizers, Government of India. For execution of this project a term loan of US Dollars 5.5 Million from Appellant 2, who was the project implementing authority. The project was financed by the Asian Development Bank.
>
> 2.2. To implement the project contractor imported the impugned goods at Mumbai by claiming the benefit of exemption under Notification No. 84/97-Cus., dated 11.11.97, as amended by

Notification No. 85/99-Cus. dated 6.7.99, No. 119/99-Cus. dated 2.11.99, No. 75/2001-Cus., dated 6.7.2001 and 107/2001Cus., dated 12.10.2001. The benefit under this Notification was admissible to all the goods imported into India and intended to be used in a project financed by the World Bank, the Asian Development Bank etc., subject to condition that the importer produces a certificate from the executive head of the Project Implementing Authority and counter signed by an officer not below the rank of Joint Secretary to the Government of India in the concerned Line Ministry, stating that the said goods are required for the execution of the said project and that this project has duly been approved by the Government of India.

2.3 Directorate of Revenue Intelligence, New Delhi ("DRI") gathered the information that Appellant 1 was claiming the benefit of this exemption from Customs duties based on forged certificates issued by Project Implementing Authority Certificates. Therefore, an inquiry and investigation was instituted in the matter."

After considering the issue, the Tribunal observed that –

"4.26 It is very interesting to note that this Notification was issued in the year 1997 and thereafter amended in the year 1999 and 2001. While the notification provided the condition for countersignature by the Joint Secretary in the concerned Line Ministry and Notification defined "Line Ministry' means a Ministry in the Government of India, which has been so nominated with respect to a project, by the Government of India, in the Ministry of Finance (Department of Economic Affairs). When the notification has defined line ministry to be one that has been so nominated by the Government of India, in the Ministry of Finance (Department of Economic Affairs), we have noted in our discussions earlier, that Department of Economic Affairs had failed to nominate any ministry as the Line Ministry for the purpose of this project. When no Ministry had been nominated as Line Ministry at the time of importation, a fact which had been noted by the Hon'ble Allahabad in its decision dated 15.10.2006 how can this condition of countersignature by the Joint Secretary of Line Ministry have been implemented. It is not the case that the appellant did not make an effort to get the certificate countersigned. However, in absence of proper nomination of the Ministry as line ministry, even the Department of Economic Affairs was unable to guide them properly.

4.27 It is more interesting to note that while notification 84/97Cus as amended provides the condition of countersignature by the Joint Secretary in the Line Ministry, nominated by the Department of Economic Affairs, Ministry of Finance and in para 44 of the impugned order, Commissioner holds that this conditions is substantial and mandatory by recording reasons which are not prescribed by the notification or by way of any instruction, circular issued. We do not find any procedure and manner of such countersignature prescribed anywhere. In absence of any such prescription of procedure and manner of countersignature, what value can be assigned to such a countersignature. Further what is the manner for verification of the countersignature by the assessing officer, notification is totally silent in this respect. In our considered opinion, such countersignatures can be obtained for a bribe, wine or women. This exactly is what happens in this case, a Junior Finance Officer, in the Department of Economic Affairs, Ministry of Finance finds the gold mine in this notification and makes use of the same by assuring the representatives of Appellant 1 who desperately were pursuing their cause for the countersignature on the Project Implementation Authority Certificate genuinely and properly issued by the Appellant 2, that he is in position to arrange for the countersignature against gratification he demands. Such sharks have their eyes wide open searching for such opportunities, which occur and reoccur on account of bureaucratic red tapeism and vague conditions as this one in the exemption notification.

4.28 We observe from plain reading of notification, that the intention of the notification is to exempt the goods imported for a project approved by Government of India and funded by the loan from an international organization. India has embarked on the path of liberalization of economy in the year 1991 with rationalization of tariff etc., to increase foreign investments in the country. This notification seeks to carry forward this spirit and promote foreign investments for the development and evolution of Indian economy. The condition of production of a certificate from the Executive Head of the Project Implementation Authority suffices the purpose of notification in all such cases where the line ministry was not nominated by the Department of Economic Affairs, prior to the importation of goods. The condition of countersignature by the Joint Secretary of Line Ministry, (which was never nominated and notified) without prescription of any procedure and manner of countersignature and manner of verification of such countersignature by the assessing officers to whom such countersigned certificate is produced, makes this condition vague. Such vague conditions need to be read down, so that the purpose for which this notification has been issued can be achieved. Explaining the Principle of Reading down, Hon'ble Supreme Court has in the case of Indian Social Action Forum [Civil Appeal No. 1510 of 2020 order dated March 6, 2020] held as follows:

> "20. Where the provisions of a statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provisions occur and purpose for which it is made, the doctrine of "reading down" can be applied. To save Rule 3(v) from being declared as unconstitutional, the Court can apply the doctrine of "reading down"."

10. Learned Authorised Representative (AR) for the Revenue reiterated the finding in the impugned order and also produced the Final Order Nos. A/86197-86198/2023 dated 18.08.2023 filed by Manager, ICICI Bank and General Manager, In-charge, ICICI Bank and after considering the role of the Bank, the matter was remanded for re-consideration of issue.

11. Heard both sides and perused the records.

12. As per the impugned order, customs duty is confirmed on the ground that the Appellant failed to produce the certificate as per the Notification. However, while considering the issue in the matter of **CCE, Chennai Vs. Dynaspede Integrated Systems Ltd. - 2002 (147) E.L.T 541 (Tri. - Chennai)** it is held that benefit of Notification cannot be denied. Regarding production of the certificate before clearance of goods being procedural, exemption not deniable on sole ground of belated submission of such certificate.

13. Accordingly, following the ratio of the decision in the matter of **M/s. Rashtriya Chemicals & Fertilizers Ltd.** (supra), the impugned order confirming the demand of customs duty, interest, confiscation of goods and penalty imposed on Appellant No. 1 are set aside.

14. As regards the appeal filed by M/s. ICICI Bank Limited, C/27834/2013, we find that though there is an omission/ procedural lapse on the part of the Appellant No. 2 regarding obtaining the counter signatures on the certificate, same cannot be considered as sufficient reason to impose penalty under Section 112A of the Customs Act, 1962 and in the absence of any order upholding the confiscation of goods which is mandatory under Customs Act, 1962 to impose penalty. Accordingly, the penalty imposed on Appellant No. 2 is also set aside.

15. Accordingly, the Appeals are allowed with consequential relief, if any, in accordance with law.

(Order pronounced in open court on 08.06.2026)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

iss…