

AUTHORITY FOR ADVANCE RULINGS
(CENTRAL EXCISE, CUSTOMS AND SERVICE TAX)
NEW DELHI

The 13th May, 2011

Ruling No. AAR/Cus/05/ 2011

In

Application No. AAR/Cus/44/12/2010

Applicant : M/s AmSafe Services India Pvt. Ltd.,
Survey No. 64, Harokyathanahalli,
Makali Post, Dasanpura Hobli,
Tumkur Road, Bangalore-562123

Commissioner
Concerned : The Commissioner of Customs,
C.R.Building, Queen's Road,
P.B. No. 5400,
Bangalore-560 001

Present for the
Applicant : Sh. Prakash Shah, Advocate

Present for the
Commissioner : Sh. Sumit Kumar, SDR
Sh. Rajinder Kumar Gupta, SDR

Ruling
(J.K.Batra)

M/s AmSafe Services India Pvt. Ltd., the applicant, is a subsidiary company of AmSafe Bridport Limited, U.K. The applicant proposes to import and supply parts of aircraft and ground handling equipment to Hindustan Aeronautics Limited (HAL), a Public Sector Undertaking in India. The applicant intends to import the goods and supply to HAL after clearance from the Bangalore Customs. Alternatively the applicant would import and stock the goods in the private bonded warehouse approved by Customs under Section 58 of the Customs Act, 1962 and supply goods to HAL on the basis of specific purchase orders. The supplies to HAL from the Customs Port or from

the private bonded warehouse shall be made against a custom duty exemption certificate (CDEC) provided to the applicant by HAL.

2 The applicant has claimed that the goods proposed to be imported by it for supplies to HAL are classifiable under heading 8803 of the First Schedule to the Customs Tariff Act, 1975 [CTA,1975] as parts of aircraft even though based on the individual description of the goods, these may independently be otherwise classifiable under different headings of the said First Schedule. The applicant has also claimed that it is eligible for the exemption from basic Customs duty and additional Customs duty on such imported parts in terms of the entry at Serial No. 10 of Notification No. 39/96-Cus dated 23.7.1996 on the basis of Customs Duty Exemption Certificate (CDEC) made available to it by HAL. The manner of certification and authority by whom the certificate will be signed have been described in the application.

3. The application was admitted by the Authority vide its Order dated 7th January, 2011 after ascertaining the comments of the concerned Commissioner. The following questions have been framed by the applicant for seeking the advance ruling:

1. *Whether the applicant would be correct in classifying the goods sought to be imported under Tariff Classification 8803 (Parts of goods of heading 8801 or 8802) as the goods shall be used as parts of aircrafts?*
2. *Whether the applicant would be correct in availing the benefit of exemption from basic Customs duty and additional Customs duty under Entry No. 10 of notification No. 39/96-Cus dated 23.7.96 (as amended) if the goods (as mentioned in Annexure III of the application) are supplied to HAL who shall use (either as raw material, capital goods or consumables) the same for manufacturing or servicing of the aircraft to be supplied to Ministry of Defence?*

4 On the first issue the applicant has stated that various kinds of aircrafts (non powered aircrafts, helicopters, aeroplanes etc.) are classified under heading 8801 and 8802 of the First Schedule to the Customs Tariff Act. Heading 8803 of the First Schedule covers “Parts of goods of heading 8801 or 8802”. According to the applicant, therefore, since the goods imported by the applicant will be used as parts of aircrafts, the same would be eligible for classification under a more specific description as parts of aircrafts under heading 8803 of the First Schedule. The applicant has relied upon rule 3 of the General Rules for the Interpretation of the Import Tariff in support of its contention. The applicant has also cited the ruling given by this Authority on the application made by M/s One Stop Airlines [2009(236) ELT 379 (AAR)] wherein it was observed that “Nuts, bolts, rivets, screws, washers, couplings etc, used in the process of servicing / repairing an aircraft’s engine can be treated as parts of aircraft provided they are specially meant for use therein”. The applicant has also referred to a decision of the Customs, Excise & Gold (Control) Appellate Tribunal (CEGAT) in the case of Indian Airlines Vs Collector of Customs [1993 (64) ELT 473(Tribunal)] wherein cabin chairs manufactured by the Boeing company or their vendors as per prescribed standards were classified as aircraft parts.

5. The Commissioner of Customs in his comments has contested the classification of some of the items such as connectors, washer, nut, bolt, screw, switch, o-ring, plug, as parts of aircrafts and has claimed that these goods merit classification under specific headings 8536, 7318, 4016 etc., rather than under the generic entry as parts of aircrafts under heading 8803. The Commissioner has also drawn our attention to the Explanatory Notes of heading 8803 of the Harmonized System of Nomenclature (HSN) which is the basis for the First Schedule to the Customs Tariff Act. The Notes stipulate that to be eligible for classification under heading 8803, the following two conditions need to be complied with,-

- (i) The parts must be identifiable as being suitable for use solely or principally with the goods of the headings 8801 or 8802 ; and

- (ii) They must not be excluded by the provisions of the Notes to Section XVII.

It has been further pointed out by the Commissioner that as per note (2) (b) of Section XVII, the expression “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this section :

“ (a)

(b) *Parts of general use, as defined in note 2 to Section XV, of base metal, or similar goods of plastics (Chapter 39).*

(c)

As per note 2 to Section XV, throughout the Schedule, the expression “parts of general use” means:

(a) *Articles of heading 73.07, 73.12, 73.15, 73.17, or 73.18 and similar articles of other base metals;*

(b) *Springs and leaves of springs, of base metal, other than clock or watch springs (heading 91.14); and*

(c) *Articles of heading 83.01, 83.02, 83.08, 83.10 and frames and mirrors, of base metal, of heading 83.06.*

The Commissioner has therefore urged that such of these articles which are covered by exclusion clauses will merit classification under their respective headings only and not under headings 8803 as claimed by the applicant.

6. During the course of arguments the Commissioner of Customs was advised to indicate the Chapter heading under which each item sought to be imported by the applicant and specified in Annexure III of the application, merited classification. It was stated by the Departmental Representative (DR) that in respect of some of the items described in the list in Annexure III, the description made available was not sufficient to decide the classification of the goods and that the Commissioner needs clarification

from the applicant. The applicant and the Commissioner were accordingly advised to examine the list together; the clarifications would be provided by the applicant wherever necessary and to identify the items where the dispute regarding classification still persisted.

7. The Commissioner has since indicated vide its letter dated 12th April, 2011 that pursuant to the directions of the Authority the applicant had a meeting with the officers of the Department. Apparently the applicant was explained the basis adopted by the Department for the classification under HSN of the various parts proposed to be imported by the applicant. The Commissioner has informed through the Departmental Representative appearing in the proceedings that vide its letter dated 1st April, 2011, the applicant has revised the HSN classification of the goods which they intend to import and sell in India and therefore there were no disputed classifications. In its aforesaid letter the applicant has informed the Assistant Commissioner of Customs as follows:

“Based on the aforesaid discussions, we have revised the HSN classification of the goods which we intend to import and sell in India. We have enclosed the said indicative list of HSN classification of the goods (marked as **Annexure A**). We would request your goodself to kindly confirm the accuracy of the HSN classification provided in the list.”

In view of the aforesaid developments and in view of the lack of detailed information before it, the Authority does not intend to go into the merits of the classification of various items adopted by the Commissioner of Customs and accepted by the applicant.

8. The second issue which has been raised by the applicant for determination by the Authority pertains to the eligibility of the applicant to claim exemption from basic Customs duty and additional Customs duty in terms of entry no. 10 of the Table in Notification No. 39/96-Cus dated 23.7.1996. Specifically, the question that needs to be addressed is whether the applicant can be said to have fulfilled the conditions

specified against Serial No.10 by furnishing a duty exemption certificate obtained by it from the HAL in the form described in the application. A related issue is whether the certificate signed by the General Manager HAL and counter signed by the Managing Director of HAL would be enough or whether the certificate should be signed by an officer not below the rank of a Joint Secretary in the Ministry of Defence.

9. Notification No. 39/96 exempts various goods of the description specified in the Table annexed to the Notification from the whole of the duty of customs leviable thereon under the First Schedule and the additional duty leviable thereon under Section 3 of the Customs Tariff Act, 1975 subject to the conditions specified in the corresponding entry of the said Table. Serial No. 10 *inter alia* exempts aircrafts, aircraft parts, aircraft engines and aircraft engine parts. The entry at S No. 10 indicating the goods and conditions subject to which the exemption is available is reproduced below:

SL.No.	Description of Goods	Condition
(1)	(2)	(3)
10.	(i) Aircrafts, aircraft parts, aircraft engines and aircraft engine parts; (ii) Production tooling including jigs, tools, fixtures, tools and gauges, ground support equipments, test / measuring equipments, scientific and technical instruments, apparatus and equipments including spare parts and components thereof, consumables; (iii) Arms, ammunition and military stores; (iv) Tools and gauges which are for use only with ammunition and explosives of service use; ammunition chemicals; electric detonators; fire directing and fire control instruments such as range-finders, predictors, platters, computers; sight dial; signal equipment including wireless equipment and component parts thereof, used exclusively by the defence services; test equipment for radars for service use; military bridging stores and equipment; ASDIC and ECHO sounding equipment; specialised cameras for Air Force use; mines sweeping gear and parachutes; (v) Radars, torpedoes, sonar sets, mine laying gear, diving equipment and their spares, accessories, jigs, tools testing equipment and components;	If,- (a) the said goods are imported by the Government of India, the contractors of the Government of India, State Governments, Public sector Undertakings of the Central Government or the State Governments and the sub-contractors of such Public Sector Undertakings; and (b) in the case of imports by contractors or sub-contractors or Public Sector Undertakings referred above, the importer furnishes at the time of import a duty exemption certificate showing:- (1) the details of the purchase order placed by the Ministry of Defence on the contractors or sub-contractors and on the said Public Sector Undertakings and the quantity of the items required to be imported to execute the said order; and (2) the details of the purchase order

	<p>(vi) Spare parts, accessories, jigs, tools, testing equipment, components, special raw materials and half wroughts like steel forgings and castings, to be processed into finished components for armoured and specialised vehicles peculiar to the defence services;</p> <p>(vii) Guided weapons and their Accessories;</p> <p>(viii) Components, spares, jigs, fixtures, tools, dies, moulds and test equipment required for the manufacture and testing of guided weapons and their accessories;</p> <p>(ix) Raw material and special materials required for the manufacture of guided weapons and their accessories;</p> <p>(x) Rock drills and breakers;</p> <p>(xi) All types of ground support equipment for guided weapons and their accessories.</p>	<p>placed by the said contractors or sub-contractors or the said Public Sector Undertakings, on their foreign suppliers indicating the description and quantity of the items.</p> <p>Explanation.-</p> <p>(i) in the case of imports by contractors of the Government of India, who are contractors of Research and Development Laboratories or Establishments under the Ministry of Defence, the certificate shall be signed by the Chief Controller of Research and Development (R) of the said Laboratories or Establishments;</p> <p>(ii) in the case of imports by Public Sector Undertakings of the Central Government under the Ministry of Defence, the certificate shall be signed by the functional Director of such Undertaking; and</p> <p>(iii) in other cases where a certificate is to be furnished by the importer at the time of import in terms of condition (b) above, the certificate shall be signed by an officer not below the rank of a Joint Secretary to the Government of India, in the Ministry of Defence.</p>
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10. The applicant has firstly claimed that notification does not restrict the exemption only to goods that are classified as parts of aircraft under heading 8803; the exemption is available to all goods falling within the First Schedule to CTA, 1975. It has, therefore, been contended that all goods imported by the applicant and classified under any chapter of the Customs Tariff will be eligible for exemption subject to fulfillment of the conditions specified against the entry. The applicant has cited a decision of the CEGAT in High Energy Batteries (I) Limited Vs Commissioner of Central Excise, Trichy [2002(142)ELT266(Tri-Chennai)] to substantiate the aforesaid submission.

11 As regards fulfillment of conditions for availing the exemption, one of the conditions is that the contractor / sub- contractor / PSU shall furnish a certificate at the time of import indicating the details of the order placed by the Ministry of Defence on the contractor / sub-contractor / PSU and the details of the purchase order in turn placed by the said contractor / sub-contractor / PSU on the foreign suppliers. The applicant submits that it is required to comply with the requirements prescribed in clause (ii) of the Explanation to be eligible for claiming the benefit of the exemption notification. The Explanation in the condition specifies the authorities who shall sign the certificate for being entitled to the exemption. The applicant informs that it will produce a certificate issued by HAL signed by its General Manager, Procurement Division and countersigned by Managing Director of HAL. The applicant claims that such a certificate would be in substantial compliance of requirements specified in the notification and hence the applicant would be eligible for the exemption. The applicant has cited the decision of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) in the case of Marshal Sons and Co (Mfg.) Limited Vs Commissioner of Customs, Chennai [2007 (220) ELT 199 (Tri-Chennai)] in support of its argument.

12. It has further been stated by the applicant that HAL has been issuing similar certificates to other vendors for claiming the benefit under the notification and that such certificates are being accepted by Customs Authorities as being valid for import of goods without payment of duties. This claim of the applicant was contested by the Departmental Representative during the arguments and it was contended that they are not aware of any such practice being prevalent and even if an error has been committed it cannot be perpetuated.

13. As an additional ground the applicant has reiterated that it is a settled principle of law that substantive benefit cannot be denied due to procedural infirmities. The applicant relies on the decision of the Hon'ble Supreme Court in the case of Mangalore Chemical and Fertilizers Limited Vs. Deputy Commissioner [1991(55)ELT

437 (SC)] wherein it was held that the stringency and mandatory nature of the condition must be defined by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. The applicant has also referred to a decision of the CEGAT in the case of SKF Bearings India Limited Vs Collector of Customs, Bombay [1999(109) ELT 774(Trib)] wherein it has been held that the production of evidence for claiming the benefit of the notification is a procedural requirement and cannot take the character of a substantive requirement. The applicant thus claims that it is eligible for the exemption on the basis of certificate signed by the General Manager of the HAL and counter signed by the Managing Director of the company.

14. From the text of the operative part of notification 39/96-Cus dated 23.7.1996 it is observed that the scope of the exemption in the notification is not confined only to goods falling under a particular chapter or a heading of the First Schedule. All goods specified in the Table and falling anywhere in the First Schedule to CTA, 1975 would be eligible for the exemption subject to fulfillment of the conditions specified therein. Accordingly the applicant is eligible for the exemption in respect of aircrafts, aircraft parts, aircraft engines etc. specified against Serial No.10 subject to fulfillment of the corresponding conditions irrespective of the fact whether such goods are classified under heading 8803 or any other heading of the First Schedule to CTA, 1975.

15. As regards compliance with the conditions specified against entry at Serial No. 10 of the Table in the Notification No. 39/96, the applicant has claimed that it falls within the ambit of clause (ii) of the Explanation to the conditions. As may be observed from the text of the clause (ii), the said clause applies to imports by Public Sector Undertakings of the Central Government under the Ministry of Defence. During the course of arguments on being asked it was clarified by the applicant that the declaration for the imported goods namely the Bill of Entry will be filed by the applicant in its own name and not by HAL even though the imports are being made for supplies to HAL. As per clause (26) of Section 2 of the Customs Act, 1962,

“importer” in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes any owner or any person holding himself out to be the importer” In the facts before us, the goods will be imported by the applicant and supplied to HAL or the goods will be imported, stored in bonded warehouse and then supplied to HAL. The import declaration will be made by the applicant in either case. In these circumstances the importer is the applicant and the goods cannot be said to have been imported by a Public Sector Undertaking; clause (ii) of the Explanation will therefore not be applicable to the applicant.

16. The applicant is not covered even by clause (i) of the Explanation to the conditions against Serial No. 10 of the Table in the Notification since the said clause applies to imports by contractors of the Government of India who are contractors of Research and Development Laboratories or Establishments under Ministry of Defence. Though the imported goods are intended for HAL, no claim has been made to the effect that HAL is a R&D Laboratory or Establishment under Ministry of Defence or that the applicant is a contractor for the Government of India. In view of the non-applicability of clauses (i) and (ii) of the Explanation, imports by the applicant would be covered by the residual clause (iii) of the Explanation and the applicant would be required to submit certificates in accordance with the said clause. In terms of clause (iii) the certificate shall be signed by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Defence. A certificate signed by General Manager or Managing Director of HAL would not therefore entitle the applicant for exemption in terms of said notification.

17. During the course of arguments certain doubts were expressed about the correctness of the text of the conditions (a) & (b) specified in column (3) against Serial No. 10 of the Table in the Notification. The applicant observed that use of the phrase “the sub-contractors of such Public Sector Undertakings” in condition (a) was perhaps a mistake and it should have read as “the contractors of such Public Sector Undertakings”. Another doubt that was expressed was whether in condition (b) the

phrase “contractors or sub-contractors or Public Sector Undertakings” should have been “contractors or sub-contractors of Public Sector Undertakings”. In this background it was desired that Gazette copy of the Notification be verified for an authentic text of the Notification. The Departmental Representative has since filed a copy of the Notification No. 39/96-Cus dated 23.07.96 bearing the signatures of the Under Secretary to the Government of India. It is the version of the text of the notification as on the date of issue (without subsequent amendments). It is observed that the paragraph pertaining to the conditions against Serial No. 10 of the Table of Notification is identical in all respects (including punctuations) to the copy of the relevant portion annexed by the applicant to its application for the ruling. It is, therefore, assumed that there is no error or misprint in the extract of the notification in relation to Serial No. 10 of the Table.

18. In the aforesaid background, there does not appear to be any ambiguity in so far as its scope and application of the exemption notification are concerned. The terms of condition (a) require that imports should be made by –

- (i) Government of India
- (ii) The contractors of the Government of India
- (iii) State governments
- (iv) Public Sector Undertakings of Central Government or the State Governments
or
- (v) the sub-contractors of such Public Sector Undertakings.

The expression “sub-contractor” appears to have been used in the condition (a) because Public Sector Undertakings themselves may be engaged as contractors of Government of India.

The requirement of furnishing of a duty exemption certificate by the importers specified in condition (b) applies only to imports by contractors or sub-contractors or PSUs. It implies that out of five categories of persons who are eligible to import goods free of duty under the notification, a certificate is required to be given only in respect of imports by the contractors or sub-contractors or PSUs. Imports by the Government

of India and State Governments do not require a certificate to be produced. Nature of certificate and the details required therein have been specified in Serial No. (1) and (2) under condition (b).

19.1 The aforesaid interpretation of the scope and application of the Notification No. 39/96-Cus is also supported by the legislative history of the exemption given to aircraft, aircraft parts, aircraft engine etc. Previously exemption to these items was available under Notification No. 155/94-Cus. dated 13.7.94 and the exemption was confined to such goods if imported by the Govt. of India or a State Govt. etc. No certification whatsoever was prescribed.

19.2 By Notification No. 184/94-Cus. dated 19.11.94, the aforesaid notification 155/94-Cus was amended. As a result of the amendment, imports by State Governments were taken out of the scope of the said exemption, whereas Public Sector Undertakings (PSUs) under the Ministry of Defence or sub-contractors of such PSUs were allowed to import goods under the said notification. Simultaneously a process of certification was introduced. In the case of imports by PSUs, a duty exemption certificate signed by the functional Director of the PSU was prescribed. In the case of imports by sub-contractors of PSUs, however, the certificate was required to be signed by an officer not below the rank of Joint Secretary in the Ministry of Defence.

19.3 Another amendment was carried out in the said exemption notification by Notification No. 66/95-Cus. dated 16.3.95, as a result of which imports by State Governments were again made eligible for the exemption. The contractors of the Govt. of India were also added to the list of entities eligible for exemption. A duty exemption certificate was prescribed to be produced in respect of imports by contractors of the Govt. of India, PSUs of the Central or State Governments and sub-contractors of such PSUs. In all these cases, the certificate was required to be signed by an officer not below the rank of Joint Secretary in the Ministry of Defence. (Certification by functional

head of a PSU in the case of imports by PSU was replaced by certification by Joint Secretary).

19.4 Further amendment was carried out in the exemption notification 155/94-Cus by Notification No. 135/95-Cus. dated 04.9.1995, wherein contractors of the Govt. of India being contractors of Research and Development Laboratories or Establishments under the Ministry of Defence as also the PSUs were required to produce the duty exemption certificate not by a Joint Secretary in the Ministry of Defence but by signatories in their own organizations. Certification by Joint Secretary was continued in respect of all importers (other than Central or State Govts.).

19.5 The aforesaid exemption contained in Notification No. 154/94-Cus. dated 13.7.1994 was replaced by the exemption notification in its current form that is Notification No. 39/96-Cus. dated 23.7.96.

19.6 It is obvious, therefore, that the exemption in Notification No. 39/96-Cus. dated 23.7.96 –

- (i) is intended for imports by certain specified entities;
- (ii) only some of the entities are required to produce a certificate;
- (iii) the certificate has to be signed by different authorities for imports by different class of entities.

20. There appears to be a sound rationale in prescribing strict conditionalities for claiming exemption in respect of imports by contractors or sub-contractors. As may be observed goods eligible for exemption against Serial No. 10 of the Table in the notification include not only aircrafts, aircraft parts etc, but also other sensitive security items like arms, ammunition, military stores, radars, torpedoes, guided weapons etc. Aircraft includes fighter aircrafts also. No restriction has been placed if said items are imported by Government of India or the State Governments but strict conditions have been specified in case of import by contractors / sub-contractors or

PSUs. Further, if the imports are by PSUs under the Ministry of Defence, a certificate by the functional Director of said undertakings has been deemed sufficient. Similarly for contractors of the Government of India who are contractors of R & D Laboratories etc., a certification by Chief of Resources of the said Laboratory has been considered adequate. In all other cases of imports by contractors or sub-contractors a certificate not below rank of a Joint Secretary has been prescribed. The intention is to subject such imports to a greater degree of scrutiny to satisfy that the goods are required for the intended purpose and are so used. There is a definite pattern in the scheme for certification that has been devised by Central Government for granting the exemption. In this background we are unable to agree with the contention of the applicant that certification is merely a procedural requirement and that once the substantive requirement is met the benefit of exemption should be extended. The applicant has cited several cases of different authorities to support the aforesaid contention.

21. In the case of Marshal Sons & Co.(Mfg.) Limited, cited by the applicant, the Revenue had denied a refund of duty *inter alia* on the grounds of the customs duty exemption certificate not having been produced at the time of import and the certificate not being as per the stipulation in the notification. Specifically, though the certificate was counter-signed by the Joint Secretary in the Ministry of Defence, it had not been issued by the Joint Secretary in the first person. The certificate also did not carry a date of issue. The text of the certificate otherwise met the requirements of the notification. It was in this background that the CESTAT observed that the deficiencies pointed out by the Revenue were procedural in nature and that the relevant conditions laid down in the notification were substantially complied with by the importer and it allowed the appeal. It is to be noted that certificate in that case had been counter signed by a Joint Secretary in the Ministry of Defence. In the applicant's case the certificate proposed to be produced for claiming exemption would be signed by the General Manager / Managing Director of HAL and not by a Joint Secretary in the Ministry of Defence. The decision of CESTAT does not support the applicant's case.

22. In the case of Mangalore Chemicals and Fertilizers Limited pertaining to a sales tax matter, there was no dispute that the appellant in that case was entitled to the benefit of a notification. The appellant had filed all the claims and applied for necessary permissions in time. The controversy was whether the appellant not having actually secured the prior permission would be entitled for the benefit. The grant of permission remained pending on account of certain outstanding inter departmental issues as to which department would absorb the financial impact of the concession. It was noted that the permission was withheld by the Revenue without any justification. A permission of this nature was a technical requirement and could be issued from the time it was applied for. It was in this background that Hon'ble Supreme Court issued directions for granting permission and consequential benefit to the appellant "in view of the admitted position that, apart from the technical objections....., there was no other impediment for the grant of permission". We are afraid the facts of the case cited by the applicant are not similar to the issues before us.

23 In the case of SKF Bearings, the appellant was required to produce a certificate to prove that the imported goods are to be used for initial setting up or for assembly or manufacture of an article and finally that the goods have been so used. The dispute in the said case was relating to the time when the certificate is required to be produced that is whether a certificate produced after the importation or clearance of the goods will enable the appellant to claim the benefit or not. There was no dispute regarding the contents or form of the certificate. Here again the facts of the two cases are vastly different for us to be coming to the conclusion that substantive conditions of the notification have been met.

24. The fact whether a requirement is substantive or procedural would need to be decided with reference to the facts of each case for exemption. Given the sensitivity of the list of items which are eligible for exemption under Serial No. 10 of the Table in notification No. 39/96, we do not agree that a certificate to be signed by a Joint

Secretary level officer is merely a procedural requirement. Each of the cases cited by the applicant can be distinguished on this principle and we are unable to be persuaded by any of those precedents in coming to this conclusion. In the circumstances the applicant would not be eligible for claiming the exemption prescribed for goods covered by Serial No.10 of the Table in the notification no. 39/96-Customs dated 23.7.1996 on the basis of a certificate signed by the General Manager, Procurement Division of HAL and countersigned by a Managing Director of the said PSU.

25. The questions raised by the applicant are therefore answered as follows:

Question. 1 *Whether the applicant would be correct in classifying the goods sought to be imported under Tariff Classification 8803 (Parts of goods of heading 8801 or 8802) as the goods shall be used as parts of aircrafts?*

Ans: Since the concerned Commissioner and the applicant have agreed upon the classification of various items proposed to be imported by the applicant, Authority declines to issue any ruling on the classification in the absence of full facts being placed before the Authority for its ruling.

Question 2 *Whether the applicant would be correct in availing the benefit of exemption from basic Customs duty and additional Customs duty under Entry No. 10 of notification No. 39/96-Cus dated 23.7.96 (as amended) if the goods (as mentioned in Annexure III of the application) are supplied to HAL who shall use (either as raw material, capital goods or consumables) the same for manufacturing or servicing of the aircraft to be supplied to Ministry of Defence?*

Ans: Exemption to the goods specified in column (2) against Serial No. 10 of the Notification no. 39/96-Cus shall be available to the applicant irrespective of the classification of the goods under any Chapter or heading of the First Schedule to the Customs Tariff Act, 1975.

The exemption shall apply only if the conditions specified in column (3) against Serial No. 10 of the notification are complied with i.e. the applicant shall produce a duty exemption certificate showing the details of the purchase order placed by the Ministry of Defence and the quantity of items required to be imported to execute the order in accordance with the conditions. The duty exemption certificate shall also indicate the details of the purchase order placed on the foreign suppliers indicating the description and the quantity of the items as specified in the conditions of exemption.

The exemption shall not be available if the duty exemption certificate is signed by the General Manager, Procurement Division, HAL and countersigned by its Managing Director. The exemption shall apply only if the certificate contains the prescribed information and is signed by an officer not below the rank of a Joint Secretary to the Government of India in the Ministry of Defence.

Accordingly Ruling is given and pronounced on this day, the 13th of May, 2011.

Sd/-
(J.K.Batra)
Member

Sd/-
(P.K.Balasubramanyan)
Chairman

Sd/-
(J.Khosla)
Member