

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Customs Appeal No. 20882 of 2019

(Arising out of Order-in-Original No. BLR-CUSTOM-AIR-342/2019
dated 21.05.2019 passed by the Commissioner of Customs, Airport &
Air Cargo Complex, Bangalore.)

**M/s. Indra Sistemas India
Private Limited,**

14th Floor, Eros Corporate Tower,
Nehru Place, New Delhi – 110 019.

Appellant(s)

VERSUS

**Commissioner of Customs,
Airport and Air Cargo
Complex,**

Air India Sats Air Freight Terminal,
KIAL, Devanahalli,
Bangalore – 560 300.

Respondent(s)

WITH

**Customs Appeal No. 20834 of 2019 &
Customs Miscellaneous Application No. 20495 of 2025
Customs Miscellaneous Application No. 20532 of 2025**

(Arising out of Order-in-Original No. BLR-CUSTOM-AIR-342/2019
dated 21.05.2019 passed by the Commissioner of Customs, Airport &
Air Cargo Complex, Bangalore.)

**M/s. GMR OSE Hongund Hospet
Highways Pvt. Ltd.,**

(Presently OSE Hongund Hospet
Highways Pvt. Ltd.)

New Udaan Bhawan Ground Floor,
Opposite T3 Terminal,
Indira Gandhi International Airport,
New Delhi – 110 037.

Appellant(s)

VERSUS

**Commissioner of Customs,
Airport and Air Cargo
Complex,**

Air India Sats Air Freight Terminal,
KIAL, Devanahalli,
Bangalore – 560 300.

Respondent(s)

AND

Customs Appeal No. 20835 of 2019

(Arising out of Order-in-Original No. BLR-CUSTOM-AIR-342/2019)

dated 21.05.2019 passed by the Commissioner of Customs, Airport & Air Cargo Complex, Bangalore.)

**M/s. GMR Hyderabad
Vijayavada Expressway Pvt.
Ltd.,**

New Udaan Bhawan Ground Floor,
Opposite T3 Terminal,
Indira Gandhi International Airport,
New Delhi – 110 037.

Appellant(s)

VERSUS

**Commissioner of Customs,
Airport and Air Cargo
Complex,**

Air India Sats Air Freight Terminal,
KIAL, Devanhalli,
Bangalore – 560 300.

Respondent(s)

APPEARANCE:

Mr. Ravi Raghavan with Ms. Purvi Asati and Ms. Ashwini Nag,
Advocates for the Appellant

Mr. Rajat with Ms. Shohini, Advocates for the Appellant

Mr. M. Sreekanth, Assistant Commissioner (AR) for the Respondent

**CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR PULLELA NAGESWARA RAO,
MEMBER (TECHNICAL)**

Final Order No. 20395 to 20397 /2026

DATE OF HEARING: 13.11.2025

DATE OF DECISION: 24.03.2026

PER : DR. D.M. MISRA

Two miscellaneous applications are filed; the first one No.C/20495/2025 is for change of cause title from M/s. GMR Ose Hongund Hospet Highways Private Limited to M/s. Ose Hongund Hospet Highways Private Limited pursuant to the issuance of incorporation certificate dated 09.09.2019 by the Registrar of Companies. Consequently, the miscellaneous application is allowed and the cause title be changed from M/s. GMR Ose Hongund Hospet Highways Private Limited to **M/s. Ose Hongund Hospet Highways Private Limited.**

The second application No. C/20532/2025 has been filed to include certain additional documents viz. Share Purchase Agreement dt. 23.03.2016 and other documents, for which the learned AR for the Revenue has no objection. Consequently, the said miscellaneous application is also allowed and the documents are taken on record.

2. The present three appeals are filed against the Order-in-Original No.BLR-CUSTOM-AIR-342/2019 dated 21.05.2019 passed by the Commissioner of Customs, Airport & Air Cargo Complex, Bangalore.

3.1. Briefly stated the facts of the case are that on the basis of intelligence that the appellant M/s. Indra Sistemas India Pvt. Ltd. (**appellant-1**) imported 'Toll collection and traffic control equipments' during the period 2012 claiming benefit of exemption Notification No.12/2012-Cus dated 17.03.2012 from payment of duty which is not admissible to them, investigation was initiated by recording statements of various persons connected with the said import and installation of the goods. On completion of the investigation, it was alleged that Indra Sistemas had imported various items of toll management systems against 11 Bills of Entry during the period 2012-13 claiming exemption under Sl.No.368 of Notification No.12/2012-Cus dated 17.03.2012. It was found by the investigating officers that the conditions mentioned under the said notification particularl Sl.No.9(a)(iii) and clause (b) are not fulfilled. During the course of investigation on the reasonable belief that the appropriate applicable duty has not been paid on the imported goods as part of the toll management system, installed at various locations by wrongly availing benefit of Notification No.12/2012-Cus. dated 17.03.2012 which were handed over to the main contractors before expiry of a period of 5 years without compliance of the said notification, the toll collection and traffic

control equipments located at various places were placed under seizure and for safe custody, handed over to the authorised persons under supratnama during the pendency of the adjudication.

3.2. Consequently, show-cause notice was issued to them on 07.06.2018 with proposal for confiscation of the goods seized under Section 111(o) of the Customs Act, 1962, recovery of the total duty of Rs.1,59,07,360/- along with interest and penalty in terms of provisions of Notification No.12/2012-Cus dated 17.03.2012 as amended read with Section 125(2) of the Customs Act, 1962. On adjudication, the learned Commissioner confirmed the duty demanded in terms of Section 125 of the Customs Act, 1962; confiscated the goods seized under Section 111(o) and Section 120(2) of the Customs Act, 1962 with a proposal for redemption of the same on payment of fine; imposed penalties on all the appellants under various provisions of Customs Act, 1962. Hence, the present appeals.

4.1. At the outset, the learned advocate appearing for the appellant-1 has submitted that the appellant is engaged in carrying out projects such as Toll Management System (TMS), transport and traffic, air traffic management, Defence and security. Pursuant to its business activities in India, the appellant-1 had entered into contracts for supply and installation of TMS for road construction projects executed by main contractors viz. M/s. GMR OSE Hongund Hospet Highways Private Limited and M/s. GMR Hyderabad Vijayawada Expressway Private Limited (collectively referred to as **appellant-2**), both on 16.02.2012. The said contract relates to supply, installation, commissioning and maintenance of TMS at Hongund Hospet at NH-13 and at NH-9, respectively. It is his contention that pursuant to the said agreement and in discharge of their obligation under the said contracts for installation of the

TMS, appellant-1 had imported various goods and equipments related to toll management from its parent company M/s. Indra Sistemas, Spain and few unrelated foreign vendors. The appellant-1 availed benefit of Sl.No.368 of the exemption Notification No.12/2012-Cus dated 17.03.2012 on import of specified toll management equipment covered under the exemption notification after following the procedure prescribed under the said Notification. They have fulfilled all the conditions mentioned in the said notification at the time of its import and also they have furnished necessary undertaking to the Deputy Commissioner of Customs that they shall use the imported goods exclusively for construction of the roads and they shall not sell or otherwise dispose of the said goods in any manner for a period of 5 (five) years from the date of their importation.

4.2. Learned advocate has further submitted that there is no dispute of the fact that the appellant-1 was duly appointed as sub-contractor by GMR. M/s. GMR and M/s. National Highways Authority of India (NHAI) recognise the appellant as sub-contractor at all times and had issued requisite letters / certificates to this effect. It is practically impossible to have the names of all sub-contractors in the main concession agreement as the sub-contractors are usually selected at a later stage as has been held by the Tribunal in the case of Schlumberger Asia Services Ltd. Vs. CC [2015(2) TMI 1001]. Further, he has submitted that they had supplied the imported goods exclusively for the identified projects, which are duly installed in the said projects for its use in the project which is covered under the exemption notification, a fact not disputed by the Revenue and evident from the certificate granted to the appellant by NHAI. Therefore, the allegation of contravention of the condition of the said Notification is improper. In support, they referred to the judgment in the case of Hindustan Constructions Co. Ltd. Vs. CC, Tuticorin [2016(12) TMMMI 762 (Tri. Chennai)]. Further, he has

submitted that in the present case, demand is under Section 125 of the Customs Act, which is not correct. In support, they referred to the judgment in the following cases:

- i. Nalin Chokse Vs. CC [2025(391) ELT 163]
- ii. Fortis Hospital Ltd. CC [2015(318) ELT 551 (SC)]
- iii. Navayuga Engineering Co. Ltd. Vs. UOI [2024(390) ELT 3 (SC)]

5.1. Learned advocate Shri Ravi Raghavan appearing for the appellant-2 has submitted that they were incorporated to undertake and perform the obligations towards execution of the contract for construction, operation and maintenance of the Hongund-Hospet portion of the NH-13 and Hyderabad-Vijayawada portion of the NH-9 respectively in terms of the bid awarded by the M/s. National Highways Authority of India (NHAI). They have entered into the Concession Agreements dated 09.10.2009 and 22.03.2010 with NHAI whereunder the appellant-2 was granted the exclusive rights to construct, operate and maintain the above mentioned part of the NH-13 and 9. This project was undertaken by the appellant-2 on the understanding of Design, Build, Finance, Operate and Transfer (DBFOT) basis which inter-alia included construction of project facilities such as toll plazas on the NHs.

5.2. It is his contention that in terms of the said Concession Agreement, the appellant-2 were granted the right to appoint sub-contractors for performance of its obligations. Pursuant to the said Concession Agreement, the appellant-2 had entered into an agreement with appellant-1, the sub-contractor, as per the Toll Management System Agreements dated 13.01.2012 and 16.02.2012 for supply, installation, commissioning and maintenance of TMS on the portion of the NHs required to be operated by the appellant-2 under the Concession Agreements with NHAI. In the sub-contractor agreements, it is clearly stipulated that they were entering into such an agreement in order to discharge its obligations under the Concession

Agreements and therefore, the sub-contractor agreements would be read in conjunction with the Concession Agreements and all related agreements for the project. Pursuant to the said agreements after appointing sub-contractor, the appellant-2 had intimated NHA I through their various communications that they had sub-contracted the supply, installation and maintenance of TMS to appellant-1 and copies of the sub-contractor agreements were also submitted to NHA I for their information. It is also specifically informed that appellant-1 will be importing equipments from outside India and list of such equipments was also furnished. The appellant-2 had also informed NHA I that appellant-1 would be availing the benefit of exemption under Notification No.12/2012-Cus dated 17.03.2012. Consequently, the NHA I has issued declaration dated 05.07.2012 certifying that appellant-1 had been engaged as a contractor for the appellant-2 for supply, installation, commissioning and maintenance of TMS for the NHs and the supply of equipment, included imported items. As appellant-1 was facing difficulties in getting clearance of imported goods, appellant-2 through their letter dated 24.02.2012 intimated the Customs authorities at various airports and air cargo complex that appellant-1 had been appointed as sub-contractor in terms of the Concession Agreement and the project needs to be completed within 150 days from the date of award of the sub-contract agreement. Consequently, the sub-contractor appellant-1 had imported various items against several Bills of Entry during the period April 2012 to August 2012 by claiming exemption from BDC and CVD in terms of Sl.No.368 of Notification No.12/2012-Cus. dated 17.03.2012 after filing necessary undertaking and bonds with the Customs Department as per the said Notification. The imported goods were duly installed at the respective sites in terms of the sub-contract agreements as well as the Concession Agreement which is on DBFOT basis; the title transfer of the imported goods from the sub-contractor to the appellant-2 was a pre-requisite to meet

the contractual obligation of operation and maintenance owed to NHAI. Consequently, the imported goods were transferred from the sub-contractor to the appellant-2.

5.3. The learned advocate has submitted that the sub-contractor appellant-1 had correctly availed the benefit of the exemption under Sl.No.368 of the Notification No.12/2012-Cus. The sub-contractor has fulfilled the condition No.9 and most of the clauses of the said condition 9 are not disputed by the Department. The Revenue has disputed sub-clause (iii) of Clause (a) of Condition 9 that the appellant-1 is not mentioned as sub-contractor in the Concession Agreement; hence the said condition is not fulfilled. In response to the said allegation, the learned advocate has submitted that appellant-1 was appointed as a sub-contractor by the appellant-2 with the approval and knowledge of the NHAI to achieve the obligation prescribed under the Concession Agreement between the appellant-2 and NHAI. Reading the sub-contract agreements with the appellant-2 and the Concession Agreements harmoniously, it could be inferred that to achieve the intended objective of NH projects, the sub-contractor has been appointed and since appellant-1 has been genuinely appointed as sub-contractor being authorised in terms of the Concession Agreements, a fact not disputed by the NHAI; therefore, clause (a) of the Condition 9 is fulfilled.

5.4. Further, he has submitted that on a harmonious reading of the sub-contract agreement along with the Concession Agreement as well as the intimations filed by the appellant-2 to NHAI and the declaration by the NHAI, it is amply clear that appellant-1 was the sub-contractor of the appellant-2 who participated in the construction of roads i.e. NHs. Further, he has submitted that it is a settled principle of law that in case of any latent ambiguities in a contract, subsequent evidence of the intention of the parties is admissible for granting benefit. In

support, they have referred to the commentary in the book viz. 'The Interpretation of Contracts, 5th ed.'" By Sir Kim Lewison. Further, he has referred to the judgment of the Hon'ble Supreme Court in the case of Food Corporation of India & Ors. Vs. Abhijit Paul [(2023) 15 SCC 40] wherein the Hon'ble Supreme Court held that extrinsic evidence in cases of latent ambiguity is admissible to ascertain where necessary, the meanings of the words used and to identify the objects to which they applied. Further, he has referred to the judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax Vs. Shiv Raj Gupta [(2015) 372 ITR 337] wherein it is held that a document executed shortly after the primary document has to be construed as and be relied upon as an aid of construction as if it forms part of the same transaction as the primary document to ascertain the true intention of the parties. He has submitted that refusing to read the above two agreement in conjunction with the subsequent letters and declaration, the learned Commissioner has given an absurd meaning to the terms of the contracts between three consensual parties and effectively held that appellant-1 was not a sub-contractor of the appellant-2. Further, they have submitted that in the impugned order, the decision in the case of Gammon India Ltd. vs. CC [2011(269) ELT 289 (SC)] has been mis-quoted and mis-interpreted without considering the distinguishable facts; therefore, not applicable to the present circumstances.

5.5. Similarly in the impugned order, the adjudicating authority has incorrectly placed reliance on the decision in the case of CC(Import), Mumbai Vs. Dilip Kumar & Company [2018(361) ELT 577 (SC)] without considering the scope of the subsequent decision of the Supreme Court in the case of Government of Kerala Vs. Mother Superior Adoration Convent [2021(376) ELT 242 (SC)]. He has submitted that a beneficial exemption should adopt a literal interpretation and in case any ambiguity arises,

pursuant to such interpretation, the benefit of such exemption should be construed in favour of the object or activity exempted under the said notification. Further, he has submitted that appellant-1 had furnished necessary undertakings to the Department at the time of import along with bonds in terms of condition (b); hence, procedural requirements under Notification No.12/2012-Cus. dated 17.03.2012 have been duly satisfied by the sub-contractor and no violation thereof could be alleged. Alternatively, if it is a procedural lapse, it cannot be the sole basis for denying the substantive benefit of the exemption. In support, they have referred to the following decisions:-

- i. Formica India Division Vs. CCE [1995(77) ELT 511 (SC)]
- ii. SL Polypack Private Limited Vs. Commissioner CGST &CX, Howrah [2023(1) TMI 931 – CESTAT KOLKATA]
- iii. Mangalore Chemicals and Fertilisers Ltd. Vs. Dy. Commissioner [1991(55) ELT 437 (SC)]

5.6. Further, it is submitted that the bonds executed by the sub-contractor at the time of import have been subsequently cancelled by the Department, which itself sufficiently establishes that the Customs Department was fully satisfied at the compliance with the conditions under Notification No.12/2012-Cus. dated 17.03.2012 in respect of the imported goods. He has submitted that once the bond has been discharged by the Customs authorities, automatically it is meant that no duty is to be paid by the importer; hence, allegation of contravention of condition of Notification No.12/2012-Cus. as deserves to be set aside. In support, they referred to the judgment in the case of Davangere Cotton Mills Ltd. Vs. CCE [1991(53) ELT 48 (Tri.)].

5.7. The learned advocate has also submitted that clause (c) of Condition No.9 of the said Notification is satisfied in the present case as the imported goods were used by the appellant-1 and appellant-2 exclusively for the intended purpose by fulfilling the obligations under the Concession Agreement i.e. TMS which was

supplied and installed in the toll plazas on the NHs. TMS seized by the Department during the investigation by the DRI were actually installed in the NHs and thus it is an undisputed fact that imported goods were not diverted to any other party or for any other purpose.

5.8. He has further submitted that the actions of the Department throughout the entire period of dispute were only in pursuance of fulfilling their obligations to NHAI under the Concession Agreement and to aid in infrastructure development in India vis-à-vis the construction and maintenance of the NHs. Thus, the allegation of aiding and abetting and suppressing the facts relating to imports cannot be sustained against the appellant-2. Consequently, direction for confiscation of the equipments under Section 111(o) of the Customs Act and imposition of penalty under Section 112 also cannot be sustained. Besides, the conditions mentioned under Section 111(o) of the Customs Act are not fulfilled in the present case as it is directed against the importer, who is responsible for fulfilling their conditions subject to which the imported goods were allowed and exemption from duty considering the fact that the appellant-2 were not importers; charge of confiscation under the Customs Act cannot be forced on them. In support, they referred to the following judgments:-

- i. Senior Superintendent of Railway Mail Service Vs. CC [2025-TIOL-1474-CESTAT-KOL]
- ii. Global Boards Ltd. Vs. CC(Export) Vs. Mumbai [2019(8) TMI 336 – CESTAT Mumbai]
- iii. Noel Agritech Ltd. Vs. CCE&C, Mangalore [2011(273) ELT 306 (Tri. Bang.)]
- iv. P. Ripakumar and Company Vs. UOI [1991(54) ELT 67 (Bom.)]

5.9. Also, they have argued that no penalty is imposable under any of the provisions of the Customs Act, 1962. They relief upon the following judgements:-

- i. Lewek Altair Shipping Pvt. Ltd. Vs. CC [2019(366) ELT 318 (Tri. Hyd.) – Affirmed in 2019(367) ELT A328 (SC).

- ii. CCE Vs. HMM Limited [1995(76) ELT 497 (SC)]
- iii. CCE&C Vs. Nakoda Textile Industries Ltd. [2009(240) ELT 199 (Bom.)]
- iv. Hindustan Steel Ltd. Vs. State of Orissa [1978(2) ELT 159 (SC)]
- v. Sij Electronics Comp Tech Vs. CC [2001(129) ELT 528 (Tri.)]

6. Learned AR for the Revenue has reiterated the findings of the learned Commissioner.

7. Heard both sides at length and perused the records.

8. The issues involved in the present appeals for consideration are whether: (i) the benefit of Sl.No.368 of exemption Notification No.12/2012-Cus. dated 17.03.2012 is available to the goods imported for use in the National Highway projects viz. "Toll Management System"(TMS) by appellant-1; (ii) the equipments imported duty-free claiming benefit of Notification No.12/2012-Cus. dated 17.03.2012 and used in the TMS are liable for confiscation under Section 111(o) of Customs Act, 1962 and (iii) penalties are imposable on the appellants.

9. Undisputed facts of the case are that the NHAI floated tender for construction, operation and maintenance of portion of two NHs viz. NH13 pertaining to Hongund-Hospet section and Hyderabad-Vijayawada Section of NH9. Consequently, NHAI after allotment of the work to appellant-2, entered into agreements titled as "Concession Agreement" dated 09.10.2009 and 22.03.2010 for implementation of the said projects. Pursuant to the said agreements, appellant-2 in turn executed agreements with M/s. Indra Sistemas India Pvt. Ltd. (appellant-1) on 13.01.2012 and 16.02.2012 to perform the work of supply, installation, commissioning and maintenance of TMS for the projects of NH13 (99kms) and NH9 (181 kms). The appointment of the sub-contractor viz. appellant-1 has been duly communicated to NHAI through various communications

commencing from 06.04.2012 intimating that appellant-1 will be importing the equipments by availing exemption from customs duty as per Notification No.12/2012-Cus dated 17.03.2012. The certificate was later issued by NHA I on 05.07.2012 acknowledging the fact that M/s. Indra Sistemas India Pvt. Ltd. was engaged as a contractor by the appellant-2. Also, a letter was addressed by appellant-2 to the Deputy Commissioner of Customs on 24.02.2012 to extend the benefit of Notification No.12/2012-Cus. dated 17.03.2012 to the appellant-1. Consequently, appellant-1 filed Bills of Entry from time to time for import of the said equipments claiming exemption benefit under Sl.No.368 of Notification No.12/2012-Cus. The exemption was extended by the Customs Department after execution of an undertaking by the appellant-1 with the Deputy Commissioner of Customs against each imports. Later, on being satisfaction, the goods were allowed to be cleared by the Customs Department extending the benefit of exemption under Notification No.12/2012-Cus and the imported equipments were installed in the TMS as per the undertaking furnished. After completion of the project, TMSs were handed over to appellant-2 by appellant-1 in November 2014 and December 2014. Consequently, on approaching the Customs Department about completion of the project, the bonds / undertakings executed were discharged by the Department.

10. The Revenue's allegation is that the appellant-1 has not complied with the pre-import condition prescribed against Sl.No.368 of Notification No.12/2012-Cus i.e. condition No.9(a)(iii) and post-importation Condition No.9(b) inasmuch as the appellant-1 has not been named as the sub-contractor in the contracts executed between NHA I and appellant-2 and also, the imported equipments which were undisputedly used only in the TMS, but were disposed / sold within a period of 5 years from the date of its import. The appellants on the other hand claimed

that the 'Concession Agreements' entered between NHAI and appellant-2 should be read in conjunction with the agreement between appellant-1 and appellant-2; also all communications exchanged from time to time between the appellant-2 with NHAI and the Customs Department; on cumulative reading these documents, it cannot be said that the appellant-1 has not been appointed / named as sub-contractor in the said 'Concession Agreements' or in pursuance to the said Agreements.

11. To analyse the rival contentions, it is relevant to understand Sl.No.368 and the appended conditions of Notification No.12/2012-Cus. dated 17.03.2012, which read as follows:-

Sl.No.368

Sl.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
368	84 or any other Chapter	Goods specified in List 16 required for construction of roads	Nil	-	9

Condition No.9

Sl.No.	Chapter or Heading or Sub-heading or tariff item	Description of goods	Standard rate	Additional duty rate	Condition No.
(1)	(2)	(3)	(4)	(5)	(6)
9.	If.- (a)the goods are imported by- (i) the Ministry of Surface Transport, or (ii) a person who has been awarded a contract for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by the Public Works Department of a State Government. Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union Territory, or (iii) a person who has been named as a sub-contractor in the contract referred to in (ii) above for the construction of roads in India by or on behalf of the Ministry of Surface Transport, by the National Highway Authority of India, by Public Works Department				

	<p>of a State Government, Metropolitan Development Authority or by a road construction corporation under the control of the Government of a State or Union Territory;</p> <p>(b) the importer, at the time of importation, furnishes an undertaking to the Deputy Commissioner of Customs or the Assistant Commissioner of Customs, as the case may be, to the effect that he shall use the imported goods exclusively for the construction of roads and that he shall not sell or otherwise dispose of the said goods, in any manner, for a period of five years from The date of their importation:</p> <p>Provided that the said Deputy Commissioner of Customs or the Assistant Commissioner of Customs, may allow the importer to sell or dispose of any of the imported goods on payment of customs duties at the rates applicable at the time of import but for this exemption, on the depreciated value of the goods to be calculated @ 5% on straight line method for each completed quarter starting from the date of importation of the said goods till the date of their sale subject to the condition that the concerned Ministry, Authority, Department or Corporation referred to in condition (a) above certifies that said goods in the project, for which duty free import was allowed, are no longer required for the project.</p>
--	---

12. On a plain reading of the said Notification, particularly Condition No.9(a), it is clear that a person who has been named as a sub-contractor in the contract referred to in sub-clause(ii) would be eligible for availing exemption for import of goods for use in the construction of roads as mentioned in Sl.No.368 and would be eligible for the said benefit. To understand whether the appellant-1 be considered as a sub-contractor, it is necessary to read certain clauses of Concession Agreements between NHAI and appellant-2 and the subsequent agreements between appellant-1 and appellant-2. The relevant clauses of the 'Concession Agreement' dated 22.03.2010 need to be quoted, which are as below:-

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the 22nd day of March, 2010.

BETWEEN

1 **THE NATIONAL HIGHWAYS AUTHORITY OF INDIA**, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 M/s GMR OSE HUNGUND HOSPET HIGHWAYS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 25/1, Skip House, Museum Road, Bangalore - 560025, Karnataka (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Government of India had entrusted to the Authority the development, maintenance and management of National Highway No. 13 including the section from km 202.000 to km 299.000 (approx. 99.054 kms).
- (B) The Authority had resolved to augment the existing road from km 202.000 to km 299.000 (approximately 99.054 km) on the Hungund-Hospet section of National Highway No.13 (hereinafter called the "**NH -13**") in the state of Karnataka by Four-Laning from existing km 202.000 (Design Km 199.221) to existing Km 288.133 (Design Km 285.100) & from Km 298.565 (Design 296.689) to existing Km 299.000 (Design Km 297.115) (approximately 86.305 Kms) and Six-Laning from Design Km 283.940 to Km 296.689 (approx. 12.749 Km) on design, build, finance, operate and transfer ("**DBFOT**") basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (C) The Authority had accordingly invited proposals by its Notice/ Request for Qualification No. NHDP III/BOT/KNT/06 dated 28th February 2009 (the "**Request for Qualification**" or "**RFQ**") for short listing of bidders for construction, operation and maintenance of the above referred section of NH -13 on DBFOT basis and had shortlisted certain bidders including, inter alia, the consortium comprising M/s.GMR Infrastructure Limited, having Registered Office at 25/1, Skip House, Museum Road, Bangalore-560025 and M/s. Oriental Structural Engineers Pvt Ltd, having Registered Office at 21, Commercial Complex, Malcha Marg, Diplomatic Enclave. New Delhi -110021 (collectively the "**Consortium**") with M/s.GMR Infrastructure Limited as its lead member (the "**Lead Member**").
- (D) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the "**Request for Proposals**" or "**RFP**") from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (E) After evaluation of the bids received, the Authority had accepted the bid of the Consortium and issued its Letter of Award No. NHAI/BOT/11012/PPPAC/KNT/05/2008/19 dated 8th February, 2010 (hereinafter called the "**LOA**") to the Consortium requiring, inter alia, the execution of this Concession Agreement within 30 (thirty) days of the date of issue thereof.

- (F) Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (G) By its letter dated 9th March 2010 the Concessionaire has also joined in the said request of the Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Consortium for the purposes hereof.
- (H) The Authority has agreed to the said request of the Consortium and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Concession Period:

- (a) construction of the Project Highway on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Project Highway in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- (h) support cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement: and
- (i) transfer the Project Highway to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be

expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Highway.

"Contractor" means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, the Tolling Contract or any other agreement or a material contract for construction, operation and/or maintenance of the Project Highway or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

Also, relevant clauses of 'Toll Management System Agreement' dated 16.02.2012 between appellant-2 and appellant-1 are reproduced below:-

AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter called the "Agreement") made and entered into this day of 16th February, 2012 at Bangalore.

BETWEEN

GMR OSE Hungund Hospet Highways Private Limited a company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at 25/1, SKIP House, Museum Road, Bangalore - 560025 and Corporate office at - IBC Knowledge Park, Phase 2, D Block, 10th Floor, 4/1, Bannerghatta Road, Bangalore 560029 hereinafter called the **"Concessionaire" or "Purchaser" or "GOHHHPL"**, (which expression shall include its successors, representatives and permitted assigns) of the **FIRST PART.**

AND

Indra Sistemas India Private Limited, a company incorporated in India with its office at 5th Floor, Wing-B, IFCI Tower, 61, Nehru Place, New Delhi 110019 India (hereinafter called **"Indra"**, or **"TMS Provider"** or **"Contractor"** or **"Successful Bidder"** or **"Bidder"**, which expression shall, unless repugnant to context or meaning thereof, include its successors in title and permitted assignees) of the **Other Part.**

WHEREAS

- A. The Government of India had entrusted to the NHAI the development, maintenance and management of National Highway No.13 including Section from km 202.000 to km 299.000 (approx. 99.054 kms).
- B. NHAI had resolved to augment the existing road from km 202.000 to km 299.000 (approximately 99.054 km) on the Hungund-Hospet section of National Highway No.13 (hereinafter called the "NH-13") in the state of Karnataka by Four-Laning from existing km 202.000 (Design Km 199.221) to existing Km 288.133 (Design Km 285.100) & from Km 298.565 (Design 296.689) to existing Km 299.000 (Design Km 297.115) (approximately 86.305 Kms) and Six-Laning from Design Km 283.940 to Km 296.689 (approx. 12.749 Km) on design, build, finance, operate and transfer ("**DBFOT**") basis (hereinafter referred as "**Project**")
- C. By an agreement dated 22 March, 2010 [the "**Concession Agreement (CA)**"], NHAI has awarded to the Concessionaire a concession for undertaking, inter alia, the Design, Engineering, Financing, Procurement, Construction, Operation and Maintenance of the Project Highway on DAPOT basis;
- D. As per the provisions of the Concession Agreement Concessionaire has to procure, install, commission and maintain a Toll Management System in the Project;
- E. The Concessionaire intends to appoint a technically competent and financially sound TMS Service Provider firm as Contractor to provide and perform the work of "Supply, Installation, Commissioning and Maintenance of Toll Management System"(hereinafter collectively called the "Works").
- F. The Contractor, having represented to the Concessionaire through a competitive Bidding Process that they have the required Equipment, professional skills, personnel resources and technical competency to carry out the Works and have agreed to execute the Works on the Terms and Conditions set forth in this Agreement;
- G. The Contractor recognizes and acknowledges that the Concessionaire is entering into this Agreement in order to discharge its obligations under the Concession Agreement and, therefore, this Agreement shall be read in conjunction with the

Concession Agreement and all related Agreements for the Project.

- H. Relying on the Contractor's representations and assertions with respect to its ability and expertise to provide and perform the Services, the Concessionaire has decided to procure the Works on the terms and conditions as set forth in this Agreement and the attachments thereto, all of which shall be treated as incorporated herein

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follow:

- 1.0. The Concessionaire hereby appoints the Contractor to "Supply, Install, Commission and Maintain the Toll Management System in the Project as detailed out in this Agreement and the Contractor hereby accepts the appointment to provide and perform the said Works for the Project in accordance with this Agreement and Other related documents. This Agreement shall be in effect from 8th December, 2011.
- 1.1. The mutual rights and obligations of the Concessionaire and the Contractor shall be as set forth in this Agreement;

The letter addressed by appellant-2 to the Project Director, NHAI dated 05.04.2012 reads as follows:-

GMR OSE Hungund Hospet Highways Private Limited

GMR OSE
Corporate Office
15C, 15th Floor, 2nd Block, ITC Plaza, 4
Kampanahalli Road, Bangalore 560 009
T: +91 80 40412500
F: +91 80 40412511
W: www.gmr-ose.com

Ref: GOHHHPL/P109/NHA/PM/Slite/12-13/2137
Date: 05.04.2012

To,
The Project Director,
National Highway Authority of India,
Project Implementation Unit Dharwad,
Second Cross, Sattur Colony, Vidyagiri,
Dharwad - 580004

Dear Sir,

Sub: Awarding of Contract for Supply, Installation, Commissioning and Maintenance of Toll Management System for the Project - Four Laning of Hungund-Hospet Section of NH-13 From Km 202.000 to Km 299.000 in the State of Karnataka on Design, Build, Finance, Operate & Transfer ("DBFOT") basis under NHDP III Toll basis (Package No: NHDP-III/BOT/KNT/06). - To Indra Sistemas India Private Limited.

We, GMR OSE Hungund Hospet Highways Private Limited, refer to the Concession awarded by NHA to GMR Consortium for development, construction, operation and maintenance of the Project - Four Laning of Hungund-Hospet Section of NH-13 From Km 202.000 to Km 299.000 in the State of Karnataka on Design, Build, Finance, Operate & Transfer ("DBFOT") basis under NHDP III Toll basis (Package No: NHDP-III/BOT/KNT/06). As part of the construction and development of the said Highways, we have awarded Contract for Supply, Installation, commissioning and maintenance of Toll Management system to M/s Indra Sistemas India Private Limited, 5th Floor, Wing-B, IFCI Tower, 61, Nehru Place, New Delhi - 560029.

For the purpose of undertaking the contract, M/s Indra Sistemas India Private Limited will be importing the Equipments as per the enclosed List from outside India. The Contractor will be availing the Exemption from Customs Duty in respect of the said equipments as provided under Government of India Notification No. 12/2012 - Customs New Delhi, dated the 17th March, 2012.

Kindly acknowledge the receipt of this communication.

With Best Regards,

Authorized Signatory

For GMR OSE Hungund Hospet Highways Private Limited

(Handwritten signature)
(Handwritten signature)

09/04/2012
K. N. Ashok Kumar
Project Director
National Highways Authority of India
MU, Dharwad

Received
11 APR 2012
Vidyagiri Office

(Handwritten notes and signatures)
G. S. Shenoi
Ashutosh Kumar
Senior Manager

13. Reading the aforesaid quoted clauses of the agreements, it is clear that under the Concession Agreement, the contractor is at liberty to appoint sub-contractors for implementation of the project work which accordingly in the present case, implemented by the appellant-2 by entering into an agreement separately with appellant-1 for TMS. Further reading the letter dt. 05.4.2012 addressed to the NHA it reveals that it was within the knowledge of NHA that a sub-contractor has been appointed by appellant-2, who was initially awarded the work for the said road construction projects. Also, for effecting the import of the necessary equipments, to avail the benefit of Notification No.12/2012-Cus, NHA has issued a certificate on 05.07.2012 to facilitate import of the equipments by the sub-contractor. Also,

appellant addressed letters to Customs Department intimating that the equipments that were to be used in the TMS be allowed to be imported by availing concession by the importer M/s. Indra Sistemas India Private Limited, appellant-1. Therefore, it is incorrect on the part of the adjudicating authority who arrived at the conclusion that since the appellant-1, M/s. Indra Sistemas India Private Limited's name was not specifically appearing in the Concession Agreement, even though there has been an agreement pursuant to the Concession Agreement entered between the NHAI and contractor appellant-2, who is authorised to enter into such contracts with appellant-1, the condition No.9(a) of the said Notification has not been fulfilled. On the contrary, we find that the appellant-1 has sufficiently complied with the Condition No.9(a) of the said Notification. This is in line with the Circular dated 16.05.2013 issued by the Board in relation to exemptions relating to oil exploration sector, wherein it is clarified that non-mention of the name of the sub-contractor in the agreement signed between the contractor and Govt. of India cannot be a ground for denying the benefit of the exemption notification and the benefit of exemption should be allowed based on the Essentiality Certificate issued. The relevant clause 2.4 of the said Circular dated 16.05.2013 is reproduced below:-

Circular No. 21/2013-Customs
F.No.B1/20/2013 -TRU
Government of India
Ministry of Finance
(Department of Revenue)
Tax Research Unit

New Delhi, dated 16th May, 2013

To,
All Chief Commissioners of Customs.
All Chief Commissioners of Customs & Central Excise.
All Chief Commissioners of Central Excise.

Subject: Difficulties being faced in availing exemption relating to the Oil Exploration Sector- Regarding.

Sir / Madam.

Representations have been received from the trade and the field formations regarding difficulties being faced in availing / extending exemption relating to the Oil Exploration Sector under Sl.No.356, 358 and 359 of notification No.12/2012-Customs, dated 17-03-2012.

2.

2.1

2.2. ...

2.3. ...

2.4. Whether each sub-contractor (of a contractor) is required to enter into a contract with the GOI or his name should figure in the contract agreement signed between the contractor and GOI for availing the benefit of this exemption.

2.4.1 Field formations are not allowing the benefit of exemption to imports made by the sub-contractor if his name does not figure in the contract signed between the GOI and the Contractor on the ground that as per the condition of the exemption, the importer is required to produce a certificate from DG, Hydrocarbons, that the imported goods have been imported under a contract signed under the New Exploration Licensing Policy, and containing the name of such sub-contractor.

2.4.2 The condition (c) (i) in all the Sl. Nos. of the said notification requires that the importer should produce an EC, which should indicate that the goods have been imported under a contract entered between the Government and the contractor, and it should also contain the name of the sub-contractor. The requirement of containing "the name of the sub-contractor" is in the EC issued by the DG Hydrocarbons and not in the original contract entered into by the contractor with the GOI. If the sub-contractor is required to enter into a contract with the GOI, then the condition viz an affidavit to the effect that such sub-contractor is a bona-fide sub-contractor of the contractor would be superfluous. Moreover, at the time of entering into contract, the contractor normally does not know the name of his sub-contractor. Hence, it is not possible to include his name in the original contract.

2.4.3 It is, therefore, clarified that non-mention of the name of sub-contractor in the agreement signed between the contractor and GOI cannot be a ground for denying the benefit of the exemption and that the exemption should be allowed based on the EC issued by the DG, Hydrocarbons.

14. More or less in identical facts and circumstances, this Tribunal in the case of ITS Solutions India Pvt. Ltd. Vs. CC, Chennai [2011(263) ELT 318 (Tri. Chennai)], holding similar view observed as follows:-

2. The appellants have been denied the exemption under Notification No. 21/2002, Sl. No. 230 as it has been held that they have not fulfilled Condition No. 40 specified against the said serial number. The impugned notification grants exemption to goods required for construction of roads. It has been held by the authorities below that the appellants are not mentioned as a sub-contractor in the contract between the Govt., of Tamilnadu and the Tamil Nadu Road Development Corporation (TNRDC) and hence they do not satisfy clause (a)(iii) of Condition No. 40. However, the learned counsel Shri Alwar appearing for the appellants shows a purchase order dated 10-10-2002 issued by the TNRDC to the appellants for high speed barrier for ECR toll plazas. He also takes us through a letter dated 7-1-2003 issued by the Govt. of Tamil Nadu to the Customs authorities clarifying that the appellants are a sub-contractor of the TNRDC. As such, we find that the purchase order issued by the TNRDC to the appellants under which the impugned road construction work has been done is very much a contract and the appellants are the contractors. Clause (a)(ii) to Condition 40 in the impugned notification also allows duty exemption to goods imported by a person who has been awarded a contract by road construction corporation under the control of the Govt. of a State. In our view, the appellants are covered under the said Clause (a)(ii) of Condition 40 having been given a contract for road building under the afore cited purchase order issued by TNRDC. Moreover, the letter issued by the Govt. of Tamil Nadu cited above clearly establishes the *bona fides* of the appellants who have undertaken the road construction work on behalf of TNRDC. Hence, we are of the view that the benefit of exemption under the impugned notification cannot be denied to the appellants. Accordingly, we set aside the impugned order and allow the appeal with consequential benefits to the appellants.

The said judgment was later followed by the Bombay Bench of this Tribunal in the case of Ideal Road Builders Pvt. Ltd. Vs. CC, Mumbai [201(12) TMI 1314 – CESTAT MUMBAI].

15. As far as compliance of clause (b) of the Condition No.9 of the said Notification is concerned, we find that after completion of the project by installation of TMS on the respective National Highways 9 & 13, the same were transferred by the appellant-1 to appellant-2 as condition of the contract between them. To read the said clause (b) of the Condition No.9 of the Notification No.12/2012-Cus. as alleged by the Revenue, that the contractor shall not sell or otherwise dispose of the goods, in any manner, for a period of 5(five) years from the date of their importation, without the permission of the Department, in our view, is misreading of the said expression. Once the project has been completed, it is not necessary for the contractor or sub-contractor to wait to hand over the project for the remaining period; also, it is wrong to construe that it cannot transfer the project to NHAI or the contractors by the sub-contractor as the case may be, even after completion of the said projects. Therefore, the Commissioner's finding that the appellant-1 has not complied with the said Condition No.9(b) also cannot be sustained. We find that in interpreting Explanation 2 of Notification No.108/95-CE dated 28.08.1995 involving more or less relating to withdrawal of the goods on completion of the projects, this Tribunal following the principle laid down by the Hon'ble Madras High Court and also later affirmed by the Hon'ble Supreme Court, observed in the case of *Schwing Shetter (I) Pvt. Ltd. Vs. CCE&ST, LTU, Chennai* [2018(34) ELT (Tri. Chennai)] as follows:-

8. In the *Bird Machines* case, the main issue was whether the exemption is available when the goods are supplied to the Contractors. The Hon'ble Apex Court vide judgment reported in [2016 \(335\) E.L.T. A27](#) (S.C.) subsequently has affirmed the decision of the jurisdictional High Court in *Caterpillar India (P) Ltd.* (supra). Therefore, the decision given in *Bird Machines* being prior to the judgment of Hon'ble Apex Court is no longer a good law and cannot be relied upon. The jurisdictional High Court in the case of *CCE,*

Pondicherry v. CESTAT, Chennai - [2016 \(335\) E.L.T. 211](#) (Mad.) has considered the eligibility of exemption Notification No. 108/95 and followed the decision in the case of *Caterpillar India (P) Ltd.* (supra). It is pertinent to mention that the Hon'ble High Court in the said judgment had disagreed with the judgment laid in the case of *Bird Machines* (supra). We find that in para-39 of the judgment in the case of *Bird Machines*, the Tribunal made an observation that benefit is available only when the goods are supplied to the project for the use at the project site. The Ld. AR has laid much thrust on the last two sentences in this para. In our view this is only a passing observation and does not lay down the ratio of the case. In other words, the issue agitated in the said case was not whether the exemption under the notification would be available if the goods are withdrawn after the completion of the project. Being only *obiter dicta* the same does not have precedential value. This apart, to compel the contractor that the capital goods used in the project cannot be withdrawn even after completion of the project would be highly impractical and impossible. The law does not compel a man to do that which he cannot possibly perform. '*Lex non cogit ad impossibilia*'. The decisions in the case of *Caterpillar India Pvt. Ltd.*, (supra), *IBM India Pvt. Ltd.*, held that the goods supplied to Contractors were available for exemption. The goods involved in these cases are not goods such as cement or steel which form part of the project permanently. The Higher Courts have held that exemption is available even if such goods are supplied to Contractor and that supply to Contractor would mean supply to Project Authority as stated in the Notification. The department cannot then interpret the Explanation inserted in the Notification to restrict the exemption only to goods which form part of project on permanent basis. The appellant has complied with the condition of furnishing certificate of designated authorities. The department allowed clearance of the goods without any murmur on the validity of the certificate. The department cannot later turn around to deny exemption by interpreting Explanation 2 to the effect that the exemption is not available if the goods are withdrawn from project site. The Contractor would not be able to retain the capital goods in the project site after completion of the project and the interpretation of Explanation 2 by the Department in this angle does not find favour with us.

16. In the result, it can be safely inferred that the appellant-1 are eligible to the benefit of Sl.No.368 of the exemption Notification No.12/2012-Cus. dated 17.03.2012 as they complied

with all the conditions of the said Notification. Since the appellants are eligible to the benefit of the said Notification, the other issues like confiscation of goods seized and imposition of penalties deserve to be set aside; accordingly, set aside. Consequently, the impugned order is set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 24.03.2026)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...