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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

To

Dated: 05/04/2017

Appellant as per address in table below
Respondent as per address in table below

Final Order No. A/70322/2017-SM[BR] dated 22/03/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/53459/2014	Landis Gyr Limited C-48, Sector-57 Gautam Budh Nagar NOIDA UP 201301
		Name and Address of Respondent
2		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Copy To
3Advocate(s) / Consultant(s):

Hemant Jajodia (C.A.)
bengal intelligent park, building alpha, 1st floor, block EP & GP, Sector-v, Salt Lake Electronics Complex Kolkata-700091

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise, I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy ~~16~~ Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. C/53459/2014-CU[SM]

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/2013-14dated 2/12/2013 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida)

M/s Landis Gyr Limited **Appellant**

Vs.

Commissioner of Customs Central Excise & Service Tax, Noida **Respondent**

Appearance:

Shri Hemant Jajodia, Chartered Accountant, for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing & Date of Decision: 22/03/2017

FINAL ORDER NO....70322/2017....

Per: Anil Choudhary

The issue in this appeal by the appellant/assessee, 100% EOU unit is, whether exemption from duty ~~free import~~ in terms of Notification No. 52/2003- Cus, have been rightly disallowed under the fact that they were issued a Procurement Certificate by the Jurisdiction Centre Excise Authority for import of Electricity Meter Test Equipment (EMTE for short) bearing code No. 'ELMA 08303E', whereas the EMTE imported by the appellant bore the code No. 'ELMA 8303B' instead of 'ELMA 08303E'.

2. The brief facts of the case are as follows:-

2.1 The facts of the case, in brief, leading to the appeal, are that the appellants is a Public Limited Company registered under the Companies Act, 1956 and is engaged in the operations relating to the development/manufacture of computer software and export from their unit, having Central Excise Registration No. AAACV922BEM002. They are also registered as a STPI unit under 100% Export Oriented Unit Scheme, formulated under Chapter-6 of the foreign Trade Policy as amended from time to time read with Chapter-6 of Handbook of Procedure (HOP), Vol. 1 and public notice/circulars issued and have a Letter of Permission (LOP) issued by the Software Technology Park of India, Noida vide reference No. STPIN/APP172920081201200/8321 and holding license (108/NII/STP/LANIS/2008 dated 28/08/2008 renewed upto 31/12/2012) of Customs Private Bonded Warehouse under Section 58 of the Customs Act, 1962 and for carrying out manufacturing and other operation of the goods permitted under Section 65 of the Customs Act, 1962. All the activities including manufacturing, Imports, Exports, Job-work and clearance under Domestic Tariff Area are being carried out under B-17 Bond No. 139 (Gen Sec.) dated 28/02/2008.

2.2 The appellant was issued a procurement certificate bearing No. 11/2011-12 by the jurisdictional Central Excise Superintendent on 24/05/2011 for import of the "bearing the code 'ELMA 8303E' Electricity meter Test equipment 8303E" as per proforma invoice No. 201105033P (purchase order No. 3114100153-0) of the supplier manufacturer i.e. Applied Precision ltd. Slovakia, which had the approval of the STPI vide No. SIPIN/IMP/201200/5182011/50966/82342-2 dated 18/05/2011. Subsequently, at the time of the re-warehousing of the goods imported against the aforementioned procurement certificate vide Bill of Entry No. 4304836 dated 08/08/2011 and the commercial invoice No. 201107124-1, it was noticed that the item so imported bore the code '8303B' instead of '8303E' which was the code only covered vide the PC No. 11/2011-12 and eligible for the duty free import under Notification No. 52/2003-Cus.

2.3 Further, A certificate, issued by the supplier manufacturer i.e. applied Precision Ltd., Slovakia, was produced by the appellant vide their letter Dated 12/09/2011 to the jurisdictional Central Excise Superintendent contending that the Item: "Electricity Meter Test Equipment '8303E' consisted of 'PS 8303B', apart from other accessories, was exactly the same as mentioned in the purchase order No. 3114100153-0. The afore-referred certificate was analyzed in the backdrop of the product catalogue of Applied Precision ltd. wherein it was noticed that the said manufacturer-supplier manufactures 'power source' of models 'PS 8303B' & PS 8303E' which are apparently independent of each other. The aforesaid goods, since imported improperly into India, valued at Rs.33,34,095/- and involving Customs duty to the tune of Rs.7,96,6771/-, were seized by the officers of Customs & Central Excise, Noida under Section 110 of the Customs Act, 1962 vide the seizure memo dated 01/02/2012 with the reasonable belief that the same were liable to confiscation under Section 111 of the Act. Accordingly, a show cause notice dated 13/04/2012 was issued to the appellants alleging that the goods so imported under the procurement certificate are not proper and proposed for – (i) confiscation of the imported goods under Section 111 of the Customs Act, 1962, (ii) demanded/recovery of customs duty of Rs.7,96,677/- under Section 28 of the Act with applicable interest and (iii) equivalent penalty under Section 28(2) ibid upon the appellants.

2.4 The Adjudicating Authority vide the impugned Order-in-Original has denied the exemption from the customs duty on imported goods, and confirmed the customs duty of Rs.7,96,677/- and ordered to recover under Section 28 of the Customs Act, 1962. He confiscated the imported goods & imposed a fine of Rs.3,10,100/- in lieu of confiscation as goods already released provisionally. A penalty equivalent to the customs duty was also imposed under Section 114A of the Customs Act, 1962 read with Section 28(2) ibid upon the appellants.

3. Being aggrieved the appellant EOU, preferred appeal before ld, Commissioner (Appeals) who held that the testing equipment with the standard accessories permitted to be imported, and the one actually imported are different goods and accordingly the appellant have rightly been held liable for

mis-declaration and fraud and availing benefit under Notification No. 52/2003- Cus., and thus dismissed the appeal.

4. Being aggrieved by the said order the appellant is before this Tribunal. The ld. Counsel, Mr. Hemant Jajodia, for the appellant urges that the ld. Commissioner failed to appreciate the fact that overseas suppliers has certified that 'ELMA 8303 E' consists of power source, 'PS 8303 B', which would mean that goods covered by Procurement Certificate only have been imported and therefore the goods in question, qualifies for Customs duty exemption. The ld. Counsel have taken me through the clarifications issued by the supplier of the testing equipment which are available at pages 117 & 118 of the appeal paper book. In the clarification of the supplier dated 18 August, 2011 certifies that Electricity Meter Test Equipment 8303 E, is as per Landis + Gyr purchase Order No. 3114100153 DT 06/05/2011 consists of Power Source PS 8303B ..... 1 pc., Reference Standard RS 2330E ..... 1 pc., Local Evaluation Units OPS 500 with accessories OPTS 2100 and OPPS 1000 .... 5 sets, Handling System FHS 5TRAS .... 1 pc., Precision Electronically Compensated Current Transformer CMR – I 2330A .... 5 pcs., Power Supply for CMR – 1 Units PSCI 1220A .... 1 pc. & Personal Computer PC 1010 .... 1 pc. It is also certified that this equipment is exactly same as per the purchase order and proforma invoice of the manufacturer supplier - M/s Applied Precision. Ltd.,

Slovakia. A further declaration dated 26/04/2012 of the said machine manufacturer states that they are manufacturer of Electricity Meter Test Systems – ELMA, further declare that the product Power Source, PS 83033 is produced and distributed in different configurations:

1/. The basic model of the Power Source is the PS 8303B with basic accuracy specification.

2/. The enhanced model of the Power Source is the PS 8303E with higher accuracy specification. The PS 8303E contains along with the basic Power Source also the Reference Standard RS 2330E as inherent component. This Reference Standard is used internally to maintain the specified high accuracy of this model.

The price of PS 8303E inherently includes the RS 2330E component and therefore the internal RS 2330E is not mentioned in the invoice and other shipping documents as separate item.

5. The ld. Counsel submits that in view of the adequate and cogent clarification given by the manufacturer - supplier of the Electricity Test Meter Equipment, there is no confusion that the product for which permission was granted and the product imported are one and the same. The ld. Counsel, further urges that there is no test report obtained by Revenue, to contradict the facts evident on the face of record. It is, further, evident that only for the insignificant difference which is in the model number of the testing machine, the

adverse inference drawn by Revenue is fit to be set aside, and the appeal allowed with consequential benefits. He, further, relies on the ruling of Division Bench of this Tribunal in the case of STI India Ltd. *Versus* Commissioner of Central Excise, Indore reported at 2008 (222) E.L.T. 112 (Tri. Delhi), wherein the assessee based at Indore imported High Speed Diesel Oil, (HSD) through Kandla Port and cleared the consignment against warehousing Bills of Entry. The said Bills of Entry were assessed under Notification No. 53/97-Cus., which exempted goods imported by an EOU from basic customs duty and additional duty of Customs. In the Finance Act,1999, an additional duty of customs was imposed on HSD imported Rs. 1 per litre, which was enhanced Rs. 1.50 per litre with effect from 1st March, 2003. There was no matching amendment in the Notification No. 53/97-Cus., in the wake of imposition of this additional duty of customs on HSD. However, the consignments imported by the assessee – STI during the material period were assessed by the assessing officers extending the benefit of Notification No. 53/97-Cus. Subsequently, Show Cause Notice was issued to recover exemption allowed on the warehousing Bills of Entry in so far as it related to the above additional duty of customs. This Tribunal on the finding that the goods in question were assessed on into bond Bills of Entry and under the admitted fact that it was not a case that the goods in question were removed from the warehouse or were not used in the production of articles exported. Further the imported goods were not cleared from the warehouse, there was no collection of duty on the goods and no short levy. Therefore, it was held that the extraordinary demand under Section 28 of the Customs Act, 1962 was not tenable. The said ruling of Division Bench have been followed and approved by the larger bench of this Tribunal in the case of Paras Fab International *Versus* Commissioner of Central Excise, Kandla reported at 2010 (256) E.L.T. 556 (Tri. - Larger Bench). Accordingly, the ld. Counsel prays for allowing the appeal with the consequential benefits.

6. The ld. A. R. for Revenue relies on the impugned order. He has drawn my attention towards the findings recorded in paragraph 4.5 of the impugned order, wherein the ld. Commissioner (Appeals) referring to Section 17 & Section 46, have held that the contention of the appellant, that duty can be demanded with reference to the date on which Bill of Entry for home consumption, in respect of warehoused goods is presented under Section 68 of the Act. Admittedly, the goods herein were warehoused, but were seized after giving opportunity to the assessee to pay the duty and interest. Further, observed that the when the fraud was detected the goods were seized under Section 110 of the Act. Therefore, it is not the case of clearance of rewarehoused goods for home consumption and accordingly, the ruling in the case of Paras

Fab International of the Larger Bench of this Tribunal (supra) is not applicable.

7. Having considered the rival contentions and on perusal of record, I find that the manufacturer/supplier located at Slovakia, have adequately explained that the machine supplied by him, and the one ordered by the appellant is one and the same and there is hardly any difference. I also notice from the facts on record, along with the Electricity Meter Testing Equipment other goods which supplement or complement the Electricity Meter Testing Equipment were also imported, which have not been objected to by the Revenue. I also find that the explanation given by the machine manufacturer have not been found to be wrong and further there is no adverse test report available on record, justifying disallowance of benefit under Notification No. 52/2003-Cus. Accordingly, I hold that the appellant EOU – STP unit is entitled to benefit of exemption of duty free import in terms of Notification No. 52/2003-Cus. Thus, the appeal is allowed and the impugned order is set aside. The appellant will be entitled to consequential benefits, if any, in accordance with law.

(Dictated and pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

प्रमाणित प्रति / Certified True Copy
24/04/17
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001

Ansari