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

Dated: 12/10/2017

To

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

Final Order No. A/71204/2017-SM[BR] dated 29/03/2017

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/70926/2016	**Gagan Impex** C/o Prajyoti K Chadha, Ss Arora& Associates, B-1/71 Safdarjung Enclave, NEW DELHI NEW DELHI 110029
		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):

Rajesh chibber
FA-9, KAVI NAGAR,
GHAZIABAD,
UP

4 Bar Association, CESTAT, Allahabad

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

6 M/s Centax Publications Pvt. Ltd., 1512-D, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony 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, I-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 Second Folder Copy 17 Guard File

Asstt. Registrar

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

APPEAL No.C/70926/2016-CU[SM]

(Arising out of Order-in-Appeal No. NOI/CUSTM/000/APP/55/2015-16 dated 31/07/2015 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Gagan Impex — **Appellant**

Vs.

Commissioner of Customs, C.E. & S.T., Noida — **Respondent**

Appearance:

Shri Rajesh Chhibber, Advocate — for Appellant
Shri Pawan Kumar Singh, Supdt (AR), — for Respondent

CORAM:

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

Date of Hearing : 29/03/2017
Date of Decision : 29/03/2017

FINAL ORDER NO–71204/2017...........

Per: Anil Choudhary

The present appeal is filed by the appellant-assessee against Order-in-Appeal No. NOI/CUSTM/000/APP/55/2015-16 dated 31/07/2015 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The issue in this appeal (second round) is whether for import of "Refurbished 15/17 inches Data graphic display tubes for color with the phosphor screen, pitch (15 inch and 17 inch) dot pitch less than

0.4mm", are freely importable or importable under special import licence being restricted item.

3. Heard the parties.

4. I find that Principal Bench of this Tribunal in Appeal No.C/50389–50404/2016–CU[SM] vide Final Order NO.54040–54055/2016–CU[SM] being order dated 06/10/2016, have held as follows:–

"After carefully considering the submissions made by both the sides, I find that as per para 2.17 of the Foreign Trade Policy 2009-2014 the second hand goods are importable, as detailed below:

Import Policy

Conditions, if any

1. Second Hand Capital Goods

(a) Restricted Category:

(i) Personal Computers / Laptops

(ii) Photocopier Machines / digital multifunction print & copying machines

(iii) Air Conditioners

(iv) Diesel generating sets

Restricted

Allowed to be imported only as per provisions of FTP. ITC (HS), HBP v1, public notice or an authorization issued for import of the specified second hand item.

Sd/-

(b) (b) Free Category

(i) Refurbished / re-conditioned spares of capital goods

Free

Subject to conditions specified in para 2.33 of HBPv1

(ii) All other second hand capital goods

Free

II. All other second hand goods

Restricted

7. *As is seen from above, the refurbished / reconditioned spares of capital goods are freely importable subject to the condition specified in para 2.33 of handbook of Procedures volume 1. As per the said condition, the second hand refurbished / reconditioned spare of capital goods other than those personal computer / personal laptops are freely importable on production of Chartered Engineer certificate that such spares have at least 80% of the residual life of the original spare. Admittedly such a certificate is available on record and there is no dispute about the same.*

8. *The appellants have also drawn my attention to the circular number 27/2011-Cus dated 04.07.2011 issued by the Central Board of Excise and Customs. On going through the same, it is seen that the goods mentioned against the items at Sl. No. B1110 of the Schedule 3 relating to waste electrical or electronic assembly can be imported with permission from Ministry of Environment and Forest. Admittedly,*

such permission stands granted by the Ministry of Environment and Forest, vide their certificate dated 17.06.2013. As such the lower authorities could not adopt reasoning for holding the imports to be restricted.

9. In view of the foregoing I set aside the impugned order and allow all the appeals with consequential relief to the appellant."

6. It is further informed by the learned Counsel for appellant that as per his knowledge no further appeal has been preferred by revenue in the afore said matter.

7. Thus, I find that in this view of the precedent final order, the issue is wholly covered in the case of M/s Gagan Impex (supra). Accordingly, I allow this appeal and set aside the impugned order, with consequential benefits.

(Dictated in Court)

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

akp

प्रमाणित प्रति/Certified True Copy
25/10/17
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