FAX : 0532-2400149

REGISTERED / AD

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

Dated: 07/03/2018

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/70535-70536/2018-CU[DB] dated 06/03/2018

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/50857/2015	**Elin Electronics Ltd** Village Belikhol Manpura, Tehsil Nalagarh SOLAN HP
2	C/50858/2015	**Elin Electronics Ltd** Village Belikhol Manpura, Tehsil Nalagarh SOLAN HP
		Name and Address of Respondent
3		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
4		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Naveen Mullick
B-388, Mera Bagh,
New Delhi
Delhi
110063

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

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

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

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

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

16 C.D.R. 17 Office Copy 18 Second Folder Copy 19 Guard File

Asstt. Registrar

Customs, Excise & Service Tax Appellate Tribunal
Regional Branch, Allahabad

Custom Appeal Nos. 50857 - 50858 of 2015

(Arising out of Order-in-Appeal No. NOI/EXCUS/000/APPL/207-208/14-15 dated 18.11.2014 passed by Commissioner (Appeals), Customs, Central Excise & Service tax, Noida)

M/s Elin Electronics Limited ...Appellant

Vs

CCE, Noidaq ...Respondent

Appearance:

Present for the Appellant :None
Present for the Respondent :Sh Mohd, Altaf, Asstt. Commissioner (AR)

Coram:

HON'BLE MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR G. SHAKKARWAR, MEMBER (TECHICAL)

Date of hearing: 03.01.2018
Date of decision: 06/03/2018

Final Order No. 70535-70536/2018

Per Archana wadhwa,

After rejecting the request for adjournment we proceed to decide the appeals as a short question is involved.

2. After hearing the ld. AR for the Revenue and after going through the impugned order, we find that the appellant imported parts of the induction cooker for captive consumption and paid the SAD on the same, on the basis of the MRP. However, subsequently the appellant instead of using the said goods

captively, sold the same and claimed refund of SAD in terms of Notification No. 102/2007-Cus dated 14.09.2001. The said notification allows refund of SAD subject to fulfilment of certain conditions i.e. that the goods stands sold on payment of VAT and the invoices showing the sale of the same are duly stamped; that neither the importer nor the purchaser of the goods has claimed the cenvat credit of such SAD.

3. The lower authorities had no dispute that all the conditions of the notification stand satisfied by the appellant and the only objection raised by the authorities below is that the goods were originally imported for captive consumption in which case the subsequent sale of the same cannot be appreciated and refund of SAD cannot be allowed. As regards the deficiency that the invoices were not stamped with ~~that~~ "no cenvat credit of SAD allowed" Commissioner (Appeals) agreed with the appellant that the basic purpose of such stamp was to stop misuse of the benefit and in the present case neither the appellant nor the buyer had availed the cenvat credit inasmuch as both were working under area based exemption notification.

4. As is seen the only ground for rejection of the refund is that the goods were not imported for sale purpose but the same were imported for captive consumption and subsequent sale of the same cannot be appreciated. We find no merit in the above objection of the Revenue. The goods imported by the appellant have admittedly been sold, fulfilling all the conditions of Notification No. 102/2007-Cus and as such the import of the same initially for captive consumption cannot be held as a obstruction to the subsequent claim of the refund. The notification nowhere requires such pre-intention of sale of goods.

We are of the view that the appellant is entitled to the refund as claimed by them. Accordingly, the impugned order is set aside and both the appeals are allowed with consequential relief to the appellant.

(Pronounced on 06/03/2018)

Sd/-
Anil.G. Shakkarwar
Member(Technical)

Sd/-
(Archana Wadhawa)
Member (Judicial)

प्रमाणित प्रति/Certified True Copy
14/03/18

Pant

सहायक पंजीकार/Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/C.E.S.T.A.T.
इलाहाबाद-211001
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