

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 29/04/2015

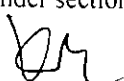
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/51452/2015-CU[DB] dated 22/04/2015

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1 C/Stay/656/2010	C/105/2010	CENTURY YARN, VILL. & POST SATRATI, DISTT. KHARGONE, (M.P.)
		Name and Address of Respondent
2		-C.C.E. INDORE Manik Bagh Palace, Post Box No. 10, Indore 452001 (M.P.)

Copy To

3 Advocate(s) / Consultant(s):

**Karanjawala & Co. Advocates
HINDUSTAN TIMES HOUSE,
10TH FLOOR,
18-20, KASTURBA GANDHI
MARG,
NEW DELHI- 110001**

4 Additional Party's Name & Address :

5 Bar Association, CESTAT, Delhi

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

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

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

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

10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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


 Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. II**

Appeal No. C/105/2010-CU(DB)

[Arising out of Order-in-Original No. 02/Commissioner/CUS/IND/09 dated 18.12.2009 by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Indore].

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial)



1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s. Century Yarn

....Appellants

Vs.

C.C.E. & S.T. Indore

....Respondent

Appearance:

Shri Amar Dave, Shri Chahat Chawla & Shri Karan Chopra,
Advocates for the Appellants

Shri Amresh Jain & Ms. Suchitra Sharma, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Hon'ble Shri R.K. Singh, Member (Technical)

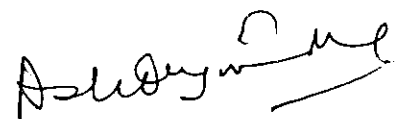
Date of Hearing: 22.04.2015

FINAL ORDER NO. 51452 /2015-CU(DB)

Per Ashok Jindal:

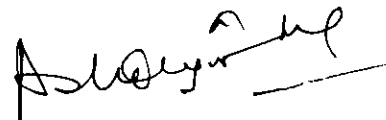
The facts leading to filing of this appeal are, in brief, as under.

1.1 The appellant are a division of M/s Century Textiles and Industries Ltd. engaged in manufacture of denim fabrics chargeable to Central Excise duty. They were earlier a 100% EOU vide LOP Dated 23.10.1990 and had commenced commercial production



thereafter. They had imported capital goods free of customs duty and had also procured from domestic sources the indigenously manufactured capital goods free of Central Excise duty. Besides the capital goods, they had also imported free of custom duty the spare parts from time to time. On 01/04/04 on their application for debonding, the Development Commissioner gave in-principal approval for debonding. Thereafter the Jurisdictional Central Excise officer after checking their stock assessed the duty on the capital goods and inputs to be paid at the time of debonding and the total excise duty and custom duty so assessed was Rs. 1,08,83,399/-. This duty was paid and on 16/04/04. The Commissioner issued a no due certificate which was passed on to the Development Commissioner. On 20/04/04 the Development Commissioner issued a final debonding order and, as such, the appellant's unit became a DTA unit.

1.2 The appellant during 1996-97 to 2001-02 period had used and capitalized certain spare parts. These spares imported free of duty were used to replace the damaged and worn out parts of the machinery. The Department in course of audit of their records, on finding that they have capitalized the spare parts during January 1996-97 to 2001-02 period, took the view that by this process, the value of the capital goods has increased and accordingly at the time of debonding, duty of Rs.50,85,814/- should have been paid on this amount after 10% depreciation. It is on this basis that after issue of show cause notice on 19.02.2009 the Jurisdictional Commissioner of Customs vide order-in-original dated 18.12.2009 confirmed the

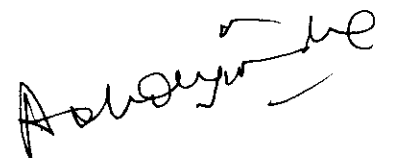


customs duty demand of Rs.50,85,814/- alongwith interest thereon under Section 28AB of Customs Act, 1962 and beside this, imposed penalty of equal amount on the appellant under Section 114A of Customs Act, 1962. Against this order of the Commissioner, this appeal has been filed.

2. Heard both the sides.

3. Shri Aman Dave, Shri Chahat Chawla and Shri Karander Dev Chopra, Advocates, the learned Counsels for the appellant, pleaded that the spare parts were not physically available at the time of debonding, as the same has been used up during the period from 1996-97 to 2001-02, that by replacing the old and worn out parts of the machinery by the new spare parts, the value of the machinery does not increase, that since the spare parts, in question, were not in stock when the in-principle approval for debonding had been granted, no duty can be demanded on the same and that in view of the above submissions, the impugned order is not correct.

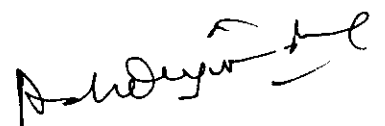
4. Shri Amresh Jain, the learned Departmental Representative, defended the impugned order by reiterating the findings of the Commissioner and emphasized that when the appellant have capitalized the spare parts, in question, there is double enrichment, as they have availed depreciation on the value of the spare parts and at the same time, they have also enjoyed the Customs duty exemption, that once the spare parts, in question, were capitalized, their value has to be added to the value of the capital goods, that the appellant had suppressed the fact of capitalization of the spare



parts, in question, during 1996-97 to 2001-02 period, which came to the notice of the Department only in course of audit of their record and, therefore, the longer limitation period has been correctly invoked and that in view of the above submissions, there is no infirmity in the impugned order.

5. We have considered the submissions from both the sides and perused the records.

6. The appellant unit during its existence as a 100% EOU had imported free of customs duty certain spare parts for machinery and there is no dispute that these spare parts were used for replacement of the old and worn out machinery parts during 1996-97 to 2001-02 period. Even though these spare parts have been capitalized, in our view once the spare parts have been used for replacement of the old and worn out machinery parts, the same become part of the machinery and they lose their separate identity. The use of these spare parts for replacing the old and worn out parts of the machinery would not increase the value of the machinery. At the time of debonding, the duty is payable on the value of the duty free raw materials and the depreciated value of the imported or indigenously procured capital goods and for this purpose, the value of the capital goods cannot be enhanced by the value of the spare parts used from time to time, even if the same have been capitalized. It is also seen that at the time of debonding, the Jurisdictional Inspector, Central Excise, after checking their records and stock, had determined the appellant's duty liability and had communicated the same under his letter dated 10/04/04 and at



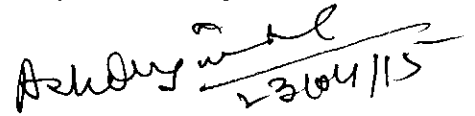
that time also he had checked the account of receipt and consumption of the imported as well as indigenously procured spare parts. In view of this, the appellant cannot be accused of suppressing the relevant information from the Department and, therefore, no justification for invoking the extended period under proviso to Section 28 (1) of the Customs Act, 1962 and, as such, the show cause notice dated 19.02.2009 is time barred.

7. In view of the above discussion, the impugned order is not sustainable on merits as well as on limitation. The same is set aside. The appeal is allowed.

(Operative part of the order pronounced in the open court.)



(R.K. Singh)
Member (Technical)


23/04/15

(Ashok Jindal)
Member (Judicial)

Bhanu