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REGISTERED / AD

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

Dated: 25/04/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/51683/2014-CU[DB] dated 27/03/2014

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/2247/2012	**VARBROS INDIA PVT LTD** 37/2/13, SITE-IV, SHEELA FORM COMPOUND, SAHIBABAD, GAZIABAD(up)
		Name and Address of Respondent
2	C/2247/2012	**COMMISSIONER OF CUSTOMS-New Delhi** New Customs House, Near I.G.I. Airport, New Delhi,

Other Appellants and Respondents as per Annexure

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

C. HARISHANKAR
46, BANK ENCLAVE,
DELHI-110092

4 Bar Association, CESTAT, Delhi

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

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

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

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

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Custom Appeal No.C/2247/2012 -CU[DB]

[Arising out of Order-in-Appeal No. 29/CE/D-II/2012 dated 14.03.2012 passed by Commissioner of Custom, Delhi II]

M/s. Varbros India Pvt. Ltd. ...Appellant

Vs.

CC, New Delhi-II ... Respondent

Present for the Appellant : Shri S. Sunil, Advocate
Present for the Respondent : Shri Govind Dixit , DR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

Date of Hearing: 27.03.2014

FINAL ORDER NO. 51683/2014 DATED: 27.03.2014

PER: D.N.PANDA

The appellant admittedly imported PVC electrical tape and PVC wire harness for use in manufacture of inductors under Notification No.25/99-CUS dated 28.02.1999 which granted exemption from Customs duty under Sl. No. 56 to the import of **insulating / taping material including pocket carrier tape) in tape, roll or strip form with or without adhesive** for use in inductor apart from other uses referred to in column No.4 of thereof. Customs found that the goods so imported were not used by the appellant in manufacture of inductors but were used in manufacture of degaussing coil inspite of execution bonds for that purpose.

Sd/-

2. Appellant arguing the appeal created a fiction submitting that even using of the above imported goods in manufacture of degaussing coil does not disentitle the appellant to the benefit of the notification for the reason that degaussing coil is one and the same as inductor. Appellant's further plea was that both the goods being same, the authority below failed to examine the technical literature produced by appellant before him. Appellant relies on the decision in the case of Govt. of India vs. India Tobacco Association reported in 2005(187) ELT 162 (SC).

3. Revenue on the other hand relying on order of the ld. Commissioner (Appeals) submitted that degaussing coil is different from inductor as is appearing in Column No.4 at Sl.No.107 of the above notification for which there is distinct recognition of such different goods by two different entries therein. So also Revenue's submission was that when the bond was executed to import raw material duty free for use in the manufacture of inductor, violation of bond condition denies Notification benefit to the appellant. The appellant abused grant of the notification by fiction.

4. On the aforesaid difference between the parties, we have examined the grant of the notification. The notification in terms of sl.No.56 shows that the goods enumerated in column No.3 thereof if used in manufacture of the goods mentioned in column 4 therefore, duty exemption is granted to the raw material appearing in column 3 thereof. For appreciation of

the usage of the imported raw material and import condition at Sl.No.56 of the notification, that is extracted below:-

Sl.No.	Chapter	Description of Imported goods	Description of finished goods
56	39, 48, 59, 85	Insulating/taping material (including pocket carrier tape) in tape, roll or strip form with or without adhesive.	Semi-conductor devices, Hybrid Microcircuts. Capacitors; deflection parts; resistors); (other-than heating resistors); semi-conductor devices; inductors Loudspeakers.

4.1 So also to resolve the controversy, rival entry at Sl.No.107 of the notification is also reproduced below:-

Sl.No.	Chapter	Description of Imported goods	Description of finished goods
107	85	Self bonding/self soldering insulated or enamelled copper wire	Deflection parts; Loudspeakers; Relays; Magnetic Heads; RF/IF Coils or Transformers and DC Micromotors upto 13.5 volts and not exceeding 20 watts rating; electronic tuner.

5. We have carefully examined both the terms viz., "inductor" and "degaussing coil" appearing in two different entries in the Notification. **The entry No.107 deals with the wire as a raw material for manufacture of the goods enumerated in column No.4 of the Notification. But Sl.No.56 deals with insulating material which was the goods imported by the appellant.** Wire and insulating materially are virtually and materially different. Therefore, invoking of entry 107 of the notification is ruled out when the goods imported was insulated material was totally different from wire.

6. Now the question comes for consideration is whether specific grant of the notification can be interpreted to expand the scope of the grant when duty exemption is granted at the public cost. If the interpretation suggested by the appellant that "degaussing coil" is" inductor" that shall defeat the spirit of the public grant and also run counter to the legislative mandate. Both goods being distinct by their character and utility and recognised by two different entries at different serial numbers of the notification, to serve their different purpose, one is not substitute of the other. Once a benefit is confined to a particular grant, that cannot be interpreted to be meant for any other purpose for which the legislature did not extend such grant. So also, the inductor specified in column 4 under Sl. No. 56 of the notification is confined to use of the raw-material mentioned in column 3 thereof. Therefore grant of Sl. No.56 is not extendable to any other goods under any fiction which otherwise shall result in abuse of the public grant. Appellant misplaced the citation aforesaid. Authorities below therefore rightly reached to the conclusion to deny the benefit of the notification to the appellant understanding the rationale thereof. Accordingly appeal of the appellant is dismissed.

[Dictated & Pronounced in the open Court].

22.4.2014 21-4.2014.

(MANMOHAN SINGH)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

Anita