REGISTERED / AD

FAX : 011-26108426

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

Dated: 07/05/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51954/2014-CU[DB]** dated **24/04/2014**

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/444/2009 | **ARICENT TECHNOLOGIES (HOLDINGS) LTD.** PLOT NO. 418 & 419, UDYOG VIHAR, PHASE-IV, GURGAON (HARYANA) |
| | | | Name and Address of Respondent |
| 2 | | C/444/2009 | **C.C. (EXPORT) NEW DELHI** Air Cargo Export, New Custom House, New Delhi 110037 |

Other Appellants and Respondents as per Annexure

**Copy To**

**3** Advocate(s) / Consultant(s):

**Sidhartha Sen, Advocate**
C-5/9, Safdarjung Development Area,
Opp IIT Gate. New Delhi.

**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.**
**DIVISION BENCH**
**Court No.2**

**Appeal No.C/444/2009-Cus**

(Arising out of OIO No. 33/ACE/JJ/2009 dt.8.4.2009 passed by CC, New Delhi)

**Aricent Technologies (Holding) Ltd.** — **Appellant**
**Vs.**
**CC, New Delhi** — **Respondent**

Present for the Appellant: Shri Rupender Singh, Advocate
Present for the Respondent: Shri Sanjay Jain, DR

**Date of hearing/Decision: 24.04.2014**

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

**FINAL ORDER NO.** 51954/2014

**PER: D.N.PANDA**

Submission of the learned Counsel is that mobile phones imported in terms of Notification No.52/03-Cus dt.31.3.2003 were meant for development of software. Under S.No.12 of annexure 1 to the said notification these goods were exempted from customs duty being prototype or a technical sample for each of the existing products for the purpose of product diversification, development or evaluation. There is no necessity for imposition of duty thereon since software development was the object of the appellant.

2. It is also submitted that alternatively, in case goods are not covered by S.No.12 of annexure 1 to the said notification, it ~~still~~ shall be covered under S.No.17 of annexure 1 to the said notification. ~~So also it is~~

Sd/-

3. Revenue supports adjudication.

4. Heard both sides and perused the records.

5. To appreciate relevancy of serial numbers 3, 12 and 17 of Annexure 1 to the above said notification, and to appreciate merit of the case, these entries are extracted below:-

**ANNEXURE-I**

| Sr. No. | Description of Goods |
|---|---|
| 3 | Uninterrupted power supply system (UPS), pollution control equipment, quality assurance equipment, storage systems, special racks for storage, modular furniture, computer furniture, anti-static carpet, tele-conference equipment, servo control system, security system, panels for electrical, net working equipment, data transfer protocol equipment , Central Air Conditioning equipments, air conditioning system and spares, consumables thereof |
| 12 | A Prototype or a technical sample for each of the existing products for the purpose of product diversification, development or evaluation; |
| 17 | Any other item required in relation to production of export goods with the prior approval of the Board of Approval. |

6. Record reveals that appellant was given procurement certificate by the Customs authorities on 1.2.2008 allowing Nokia N25 mobile phones to be cleared duty free. Similarly there is also a copy of certificate on record issued by STPI to make import of the goods duty free. That certificate relates to invoice No.991315 dated 22.1.2008 (copy of which is available at page 14 of appeal folder). Co-relation of these documents indicates that the goods imported were meant for software development. Accordingly appeal is allowed with consequential relief, if any, admissible to the appellant in accordance with law.

(Dictated & pronounced in the open court)

6.5.2014 5.5.2014

**(MANMOHAN SINGH)**
**TECHNICAL MEMEBR**

**(D.N.PANDA)**
**JUDICIAL MEMBER**

mk