

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

Dated: 21/09/2015

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/52841/2015-CU[DB] dated 12/08/2015

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/399/2010	HOTLINE CPT LTD., GBA 1-3, 8-GHIRONGI, INDUSTRIAL AREA, MALANPUR, DISTT. BHIND (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):****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 The ICFAI society, 52, Nagarjuna Hill, Punjagutta Hyderabad.-500082****15 C.D.R. 16 Office Copy 17 Guard File**

Asstt. Registrar(CUSTOMS Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi - 110 066.**

Date of Hearing/Order : 12.8.2015

Appeal No. C/399/2010-CU(DB)

(Arising out Order-in-Original No. 03/COMMR/CUS/IND/2010 dated 20/26.3.2010 passed by the Commissioner, Central Excise, Indore)

For Approval & Signature :

**Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would 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 Department Authorities?	

Hotline CPT Ltd.

Appellant

Vs.

CCE, Indore

Respondent

Appearance:

Shri Manish Saharan, Advocate - for the Appellant

Shri B.B. Sharma, D.R. - for the Respondent

**Coram : Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)**

F. Order No. 52841/2015

Per R.K. Singh:

Appeal has been filed against order-in-original dated 19.3.2010 in terms of which service tax demand of Rs.1,89,22,510/- was confirmed under Section 28 of Customs Act, 1962 along with interest and equal mandatory penalty under Section 114A of the Customs Act, 1962.



2. The facts of the case are as under:

3. The appellant a manufacture of colour picture tubes (CPTs) also used to receive old CPTs under Rule 16 of the Central Excise Rules, 2002 and repaired the same. It was importing certain goods under the benefit of exemption under Notification No. 25/1999-Cus. dated 28.2.1999. The said notification provided for concessional rate of Customs duty on goods specified therein when imported into India provided those goods were used for the manufacture of finished goods. As repair of CPTs did not amount to manufacture, such goods used for repairs were not eligible for the benefit of Notification No. 25/1999-Cus. The appellant indulged in mis-statement/suppression of facts in as much as the appellant did not disclose the fact of repairing activity carried out by it using the goods imported at concessional rate of duty under Notification No. 25/1999 while it was in the know of the fact that repair did not amount to manufacture. It also did not cooperate in providing information sought by Revenue in this regard. For that reason the Commissioner confirmed ~~the~~ impugned differential duty along with interest and penalty.

3. The appellant has contended that:

- (i) Way back 2001 it declared that it was received defective CPTs in its factory for repairs.



(ii) A defective CPTs underwent processes which amounted to manufacture. It cited the CESTAT judgment in case of *CCE, Ahmedabad Vs. Tudor (I) Ltd.* – 2006 (197) ELT 53.

(iii) The repaired CPTs were cleared on payment of Central Excise duty.

(iv) It cited judgments in the case of *Collector of Central Excise Vs. Chemphar Drugs & Liniments* – 1989 (40) ELT 276 (SC) and *Padmini Products Vs. Collector of Central Excise* – 1989 (43) ELT 195 (SC) to press the point that the extended period is not invokable in this case. It also cited the judgment of CESTAT - 2006 (197) ELT 83 (Tri.-), wherein it was held that repair/re-making battery amounted to manufacture.

4. The ld. D.R. argued that repair of CPTs did not amount to manufacture and the appellant was guilty of suppression/mis-statement as has been brought out in the impugned order.

5. We have considered the contentions of both sides. It is seen that the appellant was receiving defective CPTs under Rule 16 of the Central Excise Rules. The said rule is reproduced below:

“RULE 16. duty on goods brought to the factory. —(1)
Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.



(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.

[**Explanation.** – The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.]

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner.

As per the said Rule 16 even if the repair did not amount to manufacture, the appellant was required to pay at the time of clearance of repaired CPTs an amount equal to the Cenvat credit taken as it had taken Cenvat credit of duty paid on the defective CPT at the time of their earlier clearance from their factory. The crucial issue in this case is whether repair of CPTs amounted to manufacture. We find that in appellant's own case, – 2004(172) ELT 236 (Tri.-Del.), CESTAT (in paras 7 & 8) held that the activity of repair of CPT undertaken by the appellant did not amount to manufacture. Paras 7 & 8 of the said CESTAT judgement are reproduced below:

7. Yet another document relied on by the Commissioner is a letter dated 28-7-1998 of M/s. Texla Electronics Ltd. addressed to the appellants that they had received replacement of broken CPTs. Insurance claim of 71 CPTs according to the Commissioner is an indication that the appellants had been replacing broken CPTs with fresh CPTs in the garb of repairs. It is pointed out by the Learned Counsel for the appellant that in respect of 71 CPT while it



was being transported to the appellants factory for repairs an accident occurred en route and the CPTs were totally broken. Since CPTs could not be repaired appellants replaced 71 CPTs, In respect of the above mentioned 71 CPTs appellant had paid central excise duty and interest under intimation to the Superintendent, Central Excise Range before issue of show cause notice. This is the only goods where insurance claim had been made.

8. It is also contended by the appellant that the fact that they had reversed Modvat credit to the extent of Rs. 3,40,398/- on components like Magnet, Compation Plate, Sonibond, Rubber Wedge, etc. used in repairs of such defective CPTs would clearly show that they carried out repair work and not replacement. Learned Counsel for the appellant would further submit that there were no evidence of any excess production produced by the Department. It was also submitted that denial of Modvat on electron gun is totally unsustainable. If the loss of electron gun during the process is taken into account correctly it will be seen that there is no diversion of electron gun. According to the appellant reliance placed on MIS reports by the Commissioner is unjustified. Month-wise MIS report would show the figures of mount yield varying from 80% to 85%. In the affidavit filed by Shri D.C. Tripathi, Vice President (Works) he explained the different circumstances under which loss of electron gun comes about in the manufacturing process. Reliance is also placed by the Learned Counsel for the appellant on the Hand Book of Procedure of Standard Input-Output Norms fixed by DGFT (Ministry of Commerce) under the EXIM Policy, Sr. No. B23 under the category of 'Electronic Products' is for 100 CPTs 115 electron guns are permitted as import. This would also show that there will be loss of electron gun in the process of vaccumisation of CPTs after mounting and sealing of electron guns. The appellant has also contended that the entire demand is barred by limitation."

Thus it is evident that the appellant was fully aware that the repair activity undertaken by it did not amount to manufacture and therefore the goods used for repair of CPTs were not eligible for the concessional rate of duty under Notification No. 25/1999-Cus. as that exemption was available only for such goods which were used for the manufacture of finished goods. Therefore, demand of differential duty on such goods which were imported at concessional



rate of duty under Notification No. 25/99-Cus. and were used for repair of CPTs is clearly sustainable.

6. The appellant has contended that it had informed Revenue wayback in 2001 vide letter dated 23.5.2001 about such repairs. We have perused that letter dated 23.5.2001. In that letter it is not even indicated that it will be using goods imported at concessional rate of duty under Notification No. 25/1999-Cus. for repair work. Indeed there is no evidence to show that the appellant ever informed Revenue about using goods imported at concessional rate of duty for such repair work. The appellant was a well established manufacture of CPTs and was fully aware that the concessional rate of duty was applicable to only such goods as were used for manufacture of excisable goods. It was also aware that its repair activity did not amount to manufacture as it was so held by CESTAT in its own case wayback in 2004. In spite of that it used such parts for repairs which clearly shows its intention to evade customs duty by indulging in suppression. Indeed, as has been brought out in the impugned order, when Revenue sought the information regarding use of such goods it indulged in ^{prevarication} ~~pre-verification~~ instead of providing specific answer. Thus wilful suppression of facts on the part of the appellant is clearly evident. The judgements in the case of ***Chemphar Drugs & Liniments*** (supra) and ***Padmini Products*** (supra) essentially state that mere inaction or failure on the part of the appellant is not sufficient to invoke the extended period and there has to be



conscious or deliberate withholding of information or some positive act on the part of the appellant to demonstrate suppression has to be brought out to invoke the extended period. In the present case it is evident that the appellant was fully aware that the repair of CPTs did not amount to manufacture, it was also aware that the goods imported at concessional rate of duty were to be used only for manufacture of excisable goods and still it used those goods for repair. Not only that when information was sought, it indulged in prevarication. Thus the said judgments do not come to the rescue of the appellant. As regards the judgment of CESTAT in the case of *Tudor (I) Ltd.* (supra) referred to by the appellant to advance the proposition that repair/remaking amounts to manufacture, suffice to say that in that case CESTAT held that the processes undertaken clearly supported the conclusion that they amounted to manufacture while in its own case, CESTAT had given a finding that repair of CPTs did not amount to manufacture.

7. In the wake of the analysis above, we do not find any infirmity in the impugned order and therefore the appeal is dismissed.


(Justice G. Raghuram)
President


(R.K. Singh)
Member (Technical)

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