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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: 05/01/2016

To
Appellant as per address in table below
Respondent as per address in table below

Final Order No. C/A/53857/2015-CU[DB] dated 30/12/2015

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.**

8/1/16
ADY. Registrar(CUSTOMS Appeal Branch)

	Application	Appeal	
			Name and Address of Appellant
1	C COD 422 2010	C 553 2010	**TELETUBE ELECTRONICS LIMITED** D-34-35, SECTOR-17, KAVI NAGAR INDUSTRIAL AREA GHAZIABAD.
			Name and Address of Respondent
2			-C.C. (ICD) NEW DELHI ICD, Tughlakabad, New Delhi 110020.

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

Priyadarshi Manish,Adv
437,MATHURA ROAD, (BEHIND BHOGAL BUS STOP) JANGPURA , NEW DELHI-110014
I.P. EXTENSION, PATPARGANJ, DELHI

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

8/1/16
ADY. Registrar(CUSTOMS Appeal Branch)

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

Customs Appeal No. 553 of 2010

[Arising out of Order-in-Original No. 34/2010 dated 30.6.2010 passed by the Commissioner of Customs, New Delhi]

For approval and signature:
Hon'ble Mr. Justice G Raghuram, President
Hon'ble Shri B. Ravichandran, Member (Technical)

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. Teletube Electronics Ltd. **Appellants**

Vs.

Commissioner of Customs **Respondent**
New Delhi

Appearance:

Shri Priyadarshi Manish and Ms. Anjali Manish, Advocates for the Appellants
Shri Ranjan Khanna, DR for the Respondent

<u>**CORAM**</u>:

Hon'ble Mr. Justice G Raghuram, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing /decision: 30.12.2015

Manik

FINAL ORDER NO. 53857 /2015-Cus(DB)

Per B Ravichandran:

This appeal is against order dated 30.6.2010 of Commissioner of Customs, ICD, TKD, New Delhi. The appellant is an EOU and exported about 8000 pieces of monochrome monitor tubes. 250 of such pieces exported were rejected by the foreign buyers due to technical defects. The appellant re-imported the said rejected tubes for repair. The said goods were cleared under Bill of Entry No. 455414 dated 2.12.2006. The appellant claimed exemption from Customs duty in terms of notification No. 158/95 Cus dated 14.11.1995. One of the conditions of the notification is that the goods should be re-exported within six months of date re-importation. Proceedings were initiated against the appellant for failure to fulfill this condition in respect of 178 pieces of picture tubes. The learned Commissioner vide the impugned order confirmed the demand of Customs duty of Rs.24,20,800/- and ordered appropriation said amount from the Bank guarantee provided by the appellant at the time of re-import of defective items.

2. Learned Counsel for the appellant submitted that all the re-imported goods have been re-exported out of country. The appellant being an EOU, is governed by the exemption under notification No. 52/2003 Cus dated 31.3.2003. He specifically submitted that the said notification is squarely applicable to the facts of the present case. The only reason for denial of benefit by the Commissioner under the

said notification is that they have not opted for the same, instead claimed exemption under notification No. 158/95 Cus. Dated 14.11.1995. The learned Counsel pleaded that they have executed a B.17 Bond, all the goods imported by them are duly entered in their records and duty liability are debited in Bond account. All the conditions stipulated in the said notification No. 52/2003 have been fulfilled by them. He further submitted that the Hon'ble Supreme Court in ***Share Medical care vs. Union of India [(2007) 4 SCC 573]*** held that if an applicant does not claim benefit under a particular notification at the initial stage, he is not debarred, prohibited or estopped from claiming such benefit at a later stage.

3. Learned AR reiterated the findings of the original authority. He submitted that at the time of re-import of defective items, the appellant having opted for a particular exemption notification, has to abide by the conditions stipulated therein. The Bond with bank guarantee has also been furnished by the appellant to fulfill such conditions. Having failed to re-export the goods within 6 months the appellant has to discharge the duty liability. The learned AR further submitted that it is not open to the appellant to opt for another exemption notification after a gap of many years as this deprives the department to stipulate and monitor the conditionalities of such exemption at the time of re-import.

4. We have heard both the sides and examined appeal records. The admitted facts of the case are that the appellant is operating as EOU;

executed necessary general bond and following required procedures under the scheme. While re-importing 200 pieces of tubes they have filed the Bill of entry and undertaken to follow the conditions for claiming exemption under notification No. 158/95. Out of these goods 178 pieces could not be re-exported within 6 months, though they were later exported. The duty liability arose on such delay in re-export. We find that as EOU the appellant is eligible for duty free import which includes goods re-imported within three years from the date of exportation for repair or reconditioning. They have a general B 17 Bond for binding themselves for due exportations of goods. While it is necessary for appellant to claim a particular exemption notification and to follow the conditionalities, in the present case, we find that the impugned re-import will fall even in the general duty-free import allowed for EOU under notification No. 52/2003. Admittedly, all the conditions for such exemption have been satisfied by the appellant. Considering the facts of the present case, we find that appellant cannot be denied such exemption only on the ground that they claimed and followed another exemption notification. The Hon'ble Supreme Court's decision in ***Share Medical Care*** (supra) is applicable to this case also. The re-imported goods have been re-exported out of country. The eligibility of the appellant for exemption under notification No. 52/2003 has not been contested on any ground other than that they have not opted for the same.

5. Considering the above factual position, we find the demand of customs duty in the present case is not sustainable. Accordingly, we allow the appeal with consequential benefit, if any.

(operative part of the order pronounced in the open court)

(Justice G Raghuram)
Member(Judicial)

(B Ravichandran) 1.1.16
Member(Technical)

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