

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

Dated: 13/11/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/54314-54315/2014-CU[DB] dated 22/10/2014

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/622/2006 | CC, JODHPUR<br>HQ AT JAIPUR, NCRB,<br>STATUE CIRLCE, C-SCHEME,<br>JAIUR. |

|   |            |  |
|---|------------|--|
| 2 | C/623/2006 |  |
|---|------------|--|

|   | Name and Address of Respondent                                    |
|---|-------------------------------------------------------------------|
| 3 | ART ASIA<br>G-292-294, EPIP, SITAPURA<br>INDUSTRIAL AREA, JAIPUR. |

SANKALP INTERNATIONAL  
F-944,ROAD NO 14,  
V.K.I, JAIPUR.

Other Appellants and Respondents as per Annexure

Copy To

4 Advocate(s) / Consultant(s):

**Om. P. Agarwal & co.  
56, Section - 7, N.P.H Road,  
Jodhpur,Rajasthan**

5 Additional Party's Name &amp; Address :

6 Bar Association, CESTAT, Delhi

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

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

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

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

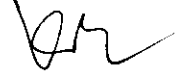
11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

15 C.D.R.      16 Office Copy      17 Guard File



Asstt. Registrar(CUSTOMS Appeal Branch)

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

<sup>Customs</sup>  
**Appeal No. 622-623 of 2006-CU[DB]**

[Arising out of Order-In-Appeal No. 25 & 26 (GRM)CUS/JPR-I/2006 dated 31.08.2006 passed by Commissioner of Central Excise, Jaipur ]

**For approval and signature:**

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Hon'ble Mr Rakesh Kumar, 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?         | No   |
| 2 | Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? | No   |
| 3 | Whether Their Lordships wish to see the fair copy of the Order?                                                                       | Seen |
| 4 | Whether Order is to be circulated to the Departmental authorities?                                                                    | Yes  |

CC, Jodhpur

Appellants

Vs.

Art Asia

Respondent

Sankalp International

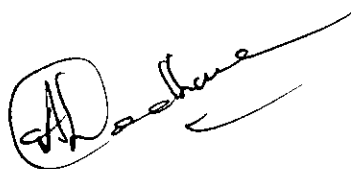
**Appearance:**

Shri Amresh Jain, AR for the Appellants

Shri O.P. Agarwal, CA for the Respondent

Date of Hearing/ Decision : 22.10.2014

**ORDER NO. FO/ 54314-54315/2014**



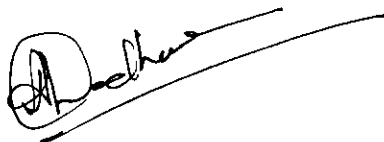
**Per Archana Wadhwa:**

A very short issue is involved in the present two appeals of the Revenue, which stands filed against the impugned orders of Commissioner (Appeals). Both appeals are being disposed of by a common order.

2. After hearing both the sides, we find that the respondent is engaged in the manufacture and export of handicraft furniture. For the said purpose they imported Polishing Material viz Stain Lacquer, Patina and Natural Wax, on payment of Concessional rate of duty as also at NIL rate of duty under Notification No. 21/2002-Cus dated 1.3.2002. The said Notification allows importation of various inputs to be used in the manufacture of Handicraft to be exported.

3. Admittedly, the appellant have utilized the said material in the manufacture of the furniture, which stands exported by them. The only dispute in the present appeals is as to whether the said furniture exported by the appellant would be considered as handicraft or not. As per the appellant the same was handicraft furniture whereas as per the revenue, the furniture was is simple furniture. Accordingly, Revenue's entertained a view that the benefit of the concessional rate of duty was not available to the respondents for importation of the raw-material, which were to be used only in the manufacture of handicrafts.

4. Accordingly, proceeding initiated against them resulted in passing of the impugned order by the original adjudicating authority, confirming the demand alongwith interest and



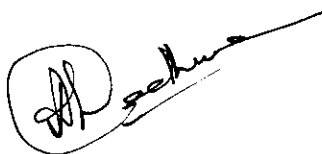
imposition of penalties. The said order of the original adjudicating authority was said aside by Commissioner (Appeals).

Hence, the present appeals by the Revenue.

5. After appreciating the arguments advanced by both the sides and after going through the impugned order of Commissioner (Appeals), we find that the appellant authority has mainly relied upon condition No. 12(a) of the Notification, which stands fulfilled by the Respondent. We reproduce the said condition:-

- " If, (a) *the goods are imported,*
- (i) *by a manufacturer of handicrafts;*
  - (ii) *by a merchant exporter tied up with supporting manufacturer of handicrafts; or*
  - (iii) *On behalf of the manufacturer or merchant exporter by the Export Promotion Council for Handicrafts, for use in the manufacture of handicrafts for export by the said manufacturers or as the case may be, the merchant exporter and the said manufacturers or as the case may be, merchant exporter is registered with the Export Promotion Council for Handicraft;*
- (b) *the value of the goods imported does not exceed 5 per cent of the FOB value of handicrafts exported during the preceding financial year; and*
- (c) *the importer produces a certificate from the Export Promotion Council for Handicrafts certifying the value of exports made during the financial year mentioned in clause (b) above and also the description, value and quantity of the item(s) already imported under this notification during the current financial year."*

6. Admittedly respondent have produced the certificate from the Export Promotion Council for Handicrafts, as required in the said notification. The revenues contention is that the



respondents have procured the said certificate by misrepresenting the FOB value of export as also by mis-declaring the simple wooden furniture as handicraft furniture. On the other hand, it is the contention of the respondent that they have filed the requisite information before Export Promotion Council of handicraft, which was duly authenticated by the Chartered Accountant and the certificates stand issued on the basis of the said information. We find that the Revenue, apart from making a bald statement that such certificates stand issued based upon mis-declaration made by the assessee, has not referred to or relied upon any evidence to substantiate the said allegation. The Notification requires issuance of certificate by the highest body operating in the field of export of handicraft. To allege that the said certificates were wrongly procured is in excess jurisdiction of the Customs, who have not been given any authority by the notification in question the corrections<sup>ness</sup> of the EPC certificates. The respondents are registered as manufacturers with the said Export Promotion Council. To allege that such certificates were obtained by mis-declaration, without any evidence, amount to casting suppressions on the said highest body dealing with export of handicraft. As such we find no merits in the revenues contention that such certificates were obtained by mis-declaration.

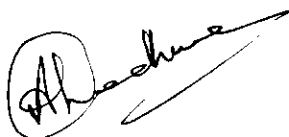
7. The Revenue has also contended that the furniture exported by the appellant was simple furniture not covered by the definition of handicraft. We find that there is no definition of handicrafts available either in the act or under notification. Shri

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Sandeep Mundra of the Respondent unit, in his statement recorded on 4.10.2005, has categorically stated that the furniture has visual appeal due to stone inlay, carving etc. and further hand embellishment & hand distressing work done to make the furniture Artistic which are sold in the International market because of its beauty. We also note that the appellant had imported stone etc also for use in the exported furniture. On the other hand the revenue has gone by the examination of the furniture by the customs officers, who cannot be held to be experts in the field. There is no expert opinion produced by the customs authorities. On the other hand the fact that the appellant is registered with the export promotion council in handicraft, is indicative of the fact that furniture manufacture by the appellant is handicraft, in which case the benefit of the notification No. 21/2002 would be available to them.

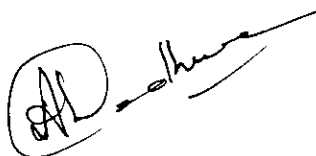
8. We may, with appreciation, reproduce the relevant para from the impugned order of Commissioner (Appeals).

*"The appellant have also contended that, the department has no jurisdiction to sit in appeal over certificates grants by competent authority/ proper officer, in compliance with conditions for grant of exemption and come to their own conclusion. I find that, the argument of the Appellant bears strong force, so long as the Appellants hold a valid certificate before the issuing authority is not sustainable. There is no evidence on record to prove that the validity of the said certificate has been challenged before the issuing authority, thus denial of benefit of exemption*

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*notification on such ground is not sustainable. The tribunal's judgment in the case of A.B. Control Vs. CC reported in 1989 (44) ELT 25 (Tribunal) is also squarely applicable in this case. I also agree with the Appellants contention that the department has no jurisdiction to doubt the validity of the certificate issued by the competent authority. The requirement of the Notification is only that the Appellant should have a certificate from EPCH. It is not the jurisdiction of the department, to verify, whether the EPCH has issued the certificate after physical verification of the goods or on the base of record produced before them. So long as the Appellants have valid certificates, benefit of the Notification cannot be denied."*

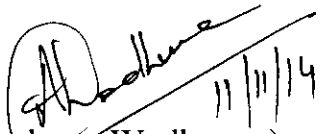
9. At this stage we make take note of the Tribunal decision in Guru Nanak Saw Mills Vs. CCE, Meerut 2009 (248) ELT 793 (Tri.-Del.) where it was held that the wooden furniture predominantly made by hand with artistic feature has to be held as satisfying the criteria of handicraft laid down by Apex Court in the matter of Louis Shoppe [1996 (83) ELT 13 (S.C.)]. Similarly, Tribunal, in the case of tip top Furniture Industries V/s. CCE, Calicut 2005 (186) ELT (Tri. Bang.) held that furniture with design items have visual appeal in the nature of ornamentation have to be held as handicraft. The Tribunal also observed that certificate issued by handicraft Development Corporation of Kerala Ltd. are required to be accepted, having been issued by an organization which is dealing with handicraft which is an expert in the field. The said decision stands upheld by Supreme Court, when the

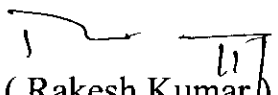


appeal filed by the Commissioner was rejected reported as 2005  
(189) ELT A 113 (SC).

10. In view of the foregoing discussions, the appeals filed by the  
Revenue are rejected.

(Pronounced in the open Court )

  
( Archana Wadhwa )  
Member(Judicial)

  
( Rakesh Kumar )  
Member(Technical)

NSB\*