

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

Appeal No. E/2936/2007 E/35 /2008 E/-36 /2008
E/S/2683/07, E/S/37-38/08
Assistant Registrar
C.E.S.T.A.T, New Delhi

Date 30/01/2008

To :
MIRC ELECTRONICS LIMITED
B-204-205, PHASE-II, NOIDA(UP)
201305

MIRC ELECTRONICS LIMITED

C.C.E. NOIDA

Appellant

Vs

Respondent

STAY ORDER NO. 90-92/08-EX

I am directed to transmit herewith a certified copy of Final order No. 33-35/2008 Excise dated *22-1-08* passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. NOIDA

B-123, SECTOR 5, NOIDA

2. Adv. / Consult

MR.R. SANTHANAM

C-3/210, JANAK PURL, NEW DELHI - 110 058.

2. SH. N. MULLICK, ADV,

B-388, MEERA BAGH, N. DELHI-63

3. SH. S. VASUDEVAN, ADV,

B-6/10, S.J. ENCLAVE, N. DELHI-29

3. S.D.R.

~~4. I.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R. Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, L.P.Estate, new Delhi

11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file

[Signature]

Assistant Registrar
(Excise Appeal Branch)

1 M/S VIMAL PLAST INDIA PVT LTD
PLOT NO 3, UDYOG VIHAR, GREATAR NOIDA.

2 LG ELECTRONICS INDIA PVT LTD

PLOT NO 51, UDYOG VIHAR, SURAJPUR-KASNA ROAD, GREATAR NOIDA, UP

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST BLOCK-II, R.K. PURAM, PRINCIPAL BENCH, NEW DELHI,
COURT NO. 1**

Excise Appeal Nos. 35 - 36 of 2008 with Excise Stay No. 37-38 of 2008
- Excise Appeal No. 2936 of 2007 with Excise Stay No. 2613 of 2007
[Arising out of order-in-original No. 37/Commr/Noida/07 dated 9.10.2007 passed
by the Commissioner of Central Excise, Noida].

Date of Hearing/ Decision: 22.01.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. T.K. Jayaraman, Member (Technical)

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|------------------------------------------------------------------------------------------------------------------------------------------|---|---|
| 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? | : | |
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M/s Vimal Plast India Pvt. Limited ...Appellant
M/s L.G. Electronics India Pvt. Limited
M/s Mirc Electronics Limited

[Rep. by Mr. Naveen Mullick, Mr. S. Vasudevan
and Mr. R. Santhanam, Advocates]

Vs.

CCE, Noida ...Respondent
[Rep. by Mr. S. Kumar, DR]

Coram: Hon'ble Justice Mr. S.N. Jha, President
Hon'ble T.K. Jayaraman, Member [Technical]

Final ORDER No - 33 - 35/2008 EX
STAY ORDER No - 90 - 92/2008 EX

Per: T.K. Jayaraman:

We heard at length the three appeals filed in respect of the impugned order wherein duty has been demanded on the main appellant M/s Vimal Plast India Pvt.

Limited. Equal penalty has also been imposed on them. In respect of other two appellants penalties have been imposed. The entire case revolves around the valuation of the products supplied by M/s Vimal Plast India Pvt. Limited to the other two appellants namely; M/s L.G. Electronics India Pvt. Ltd., and M/s Onida. M/s L.G. Electronics India Pvt. and M/s Onida supply moulds to the main appellant free of cost and sometimes some raw materials also. Using the above moulds, the main appellant manufacture plastic parts of refrigerator, TV, Washing Machine etc. The contention of the Revenue is that there is gross under valuation in respect of the goods supplied by the main appellant. Therefore, duty demand has been made. As regards the other two appellants, the allegation is that they abetted the under valuation, hence penalties have been justified.

2. In the course of the hearing, learned Advocate Sh. Naveen Mullick who appeared on behalf of M/s Vimal Plast India Pvt. Ltd., pointed out that even though the appellants requested the departmental authorities for supply of all the non relied upon documents which were seized from the main appellant, the adjudication order has been passed without supplying the same. Due to this, it was argued, that the appellants were not in position to make a proper defence. This has resulted in gross violation of principles of natural justice. The appellant did not accept any duty liability. As regards the other two appellants who received the goods and took modvat credit, it was argued that the penalties imposed on them are not at all justified.

3. On a very careful consideration of the issue, we find that the adjudication order has been passed without supplying all the non relied upon documents requested by the appellants. We are of the view that the appellants in all fairness, should be given an opportunity of defend their case after supplying the documents seized from them. Hence, we set-aside the impugned order and remand the case to the original authority for denovo decision after supplying all the non relied upon documents to the appellant within a period of three months. Needless to say that

the denovo order should be passed after giving personal hearing to all the appellants. The appeals are disposed of in the above terms.

[Dictated and pronounced in the open Court].

[Justice S.N. Jha]
President

[T.K. Jayaraman]
Member [Technical]

[Pant]