

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

Appeal No. E/5292-5293/2004 - EX[DB]

Date 06/11/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E CHANDIGARH
PLOT NO 19, SECTOR 17C, CHANDIGARH
C.C.E CHANDIGARH

M/S J.C.T ELECTROINCS LTD

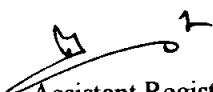
Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. 865-866/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

2009 EX[DB] dated 06-11-09


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

M/S J.C.T ELECTROINCS LTD

A-32, IND. AREA, PHASE VIII, MOHALI

2. Adv. / Consult *SH. RAJESH CHHIBBER, ADV.,
FA-2, KAVI NAGAR, GHAZIABAD*

3 C.D.R

~~4 J.C.D.R.~~

5 Bar association, CESTAT, New Delhi

6 Director Publications, Customs, Excise. I.P. Estate, New Delhi

7 M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17

9 Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, D.T. U.P.

10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12 Taxindiaonline.com Pvt Ltd. B-XI/8183, Vasant Kunj, New Delhi - 110070

13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

14 Easy Service Tax Online Dot Com Pvt Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

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

16 Office Copy

17 Guard file

18 HON'BLE PRESIDENT


Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

COURT - I

Date of Hearing: 04.11.2009
Date of decision: 09.11.2009

Excise Appeal Nos E/5292-5293/04-Ex

[Arising out of Order-in-Appeal No. No.558-559/CE/CHD/2004 dated 30.07.2004 passed by the Commissioner (Appeals) Chandigarh].

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr.P.Karthikeyan, 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?	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

CCE, Chandigarh

...Appellant

Vs.

M/s. JCT Electronics Ltd.

... Respondent

Present for the Appellant : Shri Anil Khanna, JDR
Present for the Respondent : None

Coram: Hon'ble Mr.Justice R.M.S. Khandeparkar, President
Hon'ble Mr. P.Karthikeyan, Member (Technical)

FINAL ORAL ORDER NO. 865-866/09-Ex DATED: 04.11.2009

PER: P.KARTHIKEYAN

These are appeals filed by the Revenue. Vide orders impugned, the Commissioner (Appeals) vacated demand of customs duty ^{exemption} allowed to the respondents on import of inputs for the manufacture of picture tubes in terms of Notification No.13/97-CUS dated 1.3.97 and the successor Notification

No. 25/99-CUS dated 28.2.99. Original authority had found that the impugned consignments had been allowed the benefit of the notification subject to the importer following the Customs (IGCRDMEG) Rules, 1996 (the 1996 Rules). As per rule 3 the importer is required to intimate the details of the manufacturer, inputs, finished goods etc. to the jurisdictional Assistant Commissioner and obtain a registration certificate. As per rule 4 of these Rules the importer is required to undertake the manufacturing operations using the imported inputs in his factory. The respondents had transferred the imported inputs to its another factory located at Vadodara. This constituted violation of the 1996 Rules. Accordingly, the original authority demanded the exemption from customs duty extended to the importer at the time of clearing the impugned inputs and imposed penalties as per the following details:-

Sl.No.	Period of dispute	Order-in-Original No. & date	Amount of Duty (Rs.)	Penalty imposed (Rs.)
1	i) June, 1998 to March, 2001	10/CE/ADC(P&V)/CHD/04 dated 30.1.2004	5,83,161/-	5,83,161/-
2.	ii) July, 2001 to Dec., 2001	11/CE/ADC(P&V)/CHD/04 dated 30.1.2004	12,83,298/-	12,83,298/-

2. On appeal^s by the respondents, the Commissioner found that the importer had diverted the impugned inputs under intimation to the Department to its Vadodara Unit and the Department had not raised any objection to such transfer. The rawmaterials imported had been put to the intended use as

prescribed in Notification No.13/97-CUS. and Notification No.25/99-CUS. Accordingly, the Commissioner (Appeals) found that the respondents had fulfilled the conditions prescribed to qualify for the exemption in respect of the impugned imports and had been rightly extended the exemption in terms of the Notifications.

3. Vide the impugned order, Commissioner (Appeals) allowed the appeals filed by the respondents holding that "while diverting the goods in question under intimation to the Department, no objection was raised by the Department or the Appellants were not advised not to do so. In such a situation, I find no reason in demanding the differential duty on the imported goods and imposing the penalty".

4. In the appeal, filed by the revenue the following ground has been taken. Appeals seek to restore the demands and to impose penalty under section 114A on the respondents.

5. As per rules 3 & 4 of 1996 Rules, the concession of customs duty is admissible for the goods imported if they are used in the respondent's factory. The sole ground raised is that as per rule 3 & 4 of 1996 Rules, the importer is required to undertake manufacturing in "his factory". Concession could not be allowed if the inputs are put to use in any other factory as the rules envisaged "use of the imported goods" in that "particular factory" for which the registration was given.

6. We have heard the Id. JDR who reiterated the ground raised in the appeals. Nobody is present representing the respondents.

7. We have carefully perused the records and considered the submissions. We observe that the exemption in terms of the notifications is sought to be denied on the sole ground that in respect of the impugned goods there was failure on the part of the importer to follow the 1996 Rules and thereby not fulfilling the condition of the notification for the goods to qualify for the exemption. We find that the only failure of the importer was that it did not use the imported inputs in the factory registered with the jurisdictional Asstt. Commissioner in terms of rules 3 and 4 of the 1996 Rules, but used the same for the intended purpose in another of its factories with the approval of the department. In such circumstances, we find that the assessee cannot be denied a substantial benefit for its failure to follow a procedural condition condoned by the department. We do not find any reason to interfere with the impugned order and dismiss the appeals filed by the revenue as devoid of merit.

(JUSTICE R.M.S.KHANDEPARKAR)
PRESIDENT

(P.KARTHIKEYAN)
MEMBER (TECHNICAL)

Anita