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

Appeal No. C/534 /2008 - CU[DB] Date 24/09/2008

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

To :
M/S SHRI RAM HARI RAM & SONS PVT. LTD.
A-22, GREEN PARK MAIN,
NEW DELHI-110016.

M/S SHRI RAM HARI RAM & SONS PVT. LTD. Appellant
Vs
C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of Final order No. C/347 2008 CU[BR] dated 19.09.08 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.
2. Adv. / Consult
MR.V. LAXMIKUMARAN. ADV.,
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029
3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 534 of 2008

[Arising out of Order-in-Appeal No. CC(A)/Cus/I&G/D-I/227/2008 dated 12.6.08 passed by Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, 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? : 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

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M/s. Shri Ram Hari Ram & Sons Pvt.Ltd. Appellant

Vs.

Commissioner of Customs
New Delhi Respondent

Appearance: Mr. R.K. Hasija, Advocate for the Appellant
Mr. Vijay Kumar, DR for the Respondent

CORAM: Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 19.9.2008

Final **ORDER NO. C/342/08**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. CC(A)/Cus/I&G/D-I/227/2008 dated 12.6.08.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The appellant exported a consignment of gold jewellery on 5.9.07 in connection with an exhibition held in USA. They reimported the same consignment in January, 2008 and filed Bill of Entry dated 28.1.08 and claimed benefit of exemption Notification No. 94/96-Cus dated 16.12.96 applicable to reimported goods.

b) The original authority held that the appellant should have re-imported the goods within 60 days as stipulated under para 4A.18 of EXIM Policy relating to Export / Import of gems and jewellery. It was held that the goods exported and reimported are the same. The concession was denied only on the ground that the re-importation has taken place beyond the prescribed period of 60 days.

c) On the above findings duty of Rs.14,15,935/- stands demanded.

4.1 Learned advocate submits that the provisions of EXIM policy relied by the department for denying the concession comes under the Chapter dealing with DEEC scheme and relating to import /export of gems and jewellery under the said DEEC Scheme. They have not imported any material duty free under the DEEC scheme or any other schemes in relation to export products. Therefore to apply the condition relating to such schemes to their case is incorrect.

4.2 He also submits that the Notification No. 94/1996 is independent and has no relevance or linkage to DEEC scheme; they have re-imported the goods within the maximum time limit of three years specified in the Notification and therefore, exemption should be granted as there is no dispute about the identity of the goods exported which has been reimported.

5. Learned DR submits that the provision relating to temporary exportation of gems and jewellery for exportation purposes provided under Chapter 4 of the Foreign Trade Policy should be applicable generally to all exports not necessarily to the exports and re-imports under DEEC scheme and other related schemes.

6. We have carefully considered the submissions from both the sides. We are in agreement with the submissions of the learned advocate that the restriction relating to re-import within six months of gems and jewellery comes under Chapter governing DEEC schemes. We do not find justification to extend this condition to exports and imports which are not under these schemes. The Customs Notification prescribe the condition of re-importation within three years of exportation. This condition, admittedly, stands fulfilled. In view of the above, we are not able to sustain the orders of the lower authorities denying the concession of the Notification No. 94/1996.

7. We allow the appeal with consequential relief, if any, as per law.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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