TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

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

Appeal No. C/920 /2005-922 /2005 - CU[DB] Date 10/11/2008

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

To:
1. MR LAKSHMI NARAIN AGARWAL
2. MR ARVIN KUMAR GUPTA
3. M/S LAKSHMI FLOAT GLASS LTD

A2/10, WHS, DDA MARBLE MARKET,
KIRTI NAGAR, NEW DELHI

M/S LAKSHMI FLOAT GLASS LTD — Appellant

Vs

THE COMMISSIONER OF CUSTOMS, NEW DELHI — Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/575-577/08-CUS. DATED 27.08.08**

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

   THE COMMISSIONER OF CUSTOMS,

   ICD, TUGHLAKABAD, NEW DELHI
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
15. Office Copy
16. Guard file

Assistant Registrar

(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Appeals Nos.920-922 of Customs Branch /05

[Arising out of Order-in-Original No.68/65 dated 16.08.2005 passed by the Commissioner of Customs, New Delhi]

Date of Hearing:27.08.2008

For approval and signature:
Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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?	:	No
3. Whether Their Lordships wish to see the fair copy of the Order?	:	
4. Whether Order is to be circulated to the Departmental authorities?	:	Yes

(1) M/s. Lakshmi Float Glass Ltd. ...Appellants
(2) Mr. Arvin Kumar Gupta, Director
(3) Mr. Laxmi Narain Agarwal, Director
[Rep. by Shri R.K. Hasija, Advocate]

Vs.

Commissioner of Customs, New Delhi ...Respondent
[Rep. by Shri A.K. Madan, DR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Mr. P.K. Das, Member (Judicial)

Final Order No. C/575-577/08 /Dated:27.08.2008

<u>Per P.K. Das</u>:

The relevant facts of the case, in brief, are that the Appellants imported "glazing glass" classifiable under Heading No.7020 of the

Customs Tariff Act and availed duty exemption against transferable DFRC licence, which is meant for use solely in the manufacture/processing of leather and used to lend a glossy finish to finished leather. It has been alleged that the Appellants imported float glass in the guise of glazing glass and availed exemption benefit. The Adjudicating Authority confiscated the seized goods and imposed redemption fine of Rs.12,00,000/- and confirmed a demand of Rs.30,41,175.60 and imposed penalty of Rs.10,00,000/- on the Appellant No.1. He also imposed penalty of Rs.2,00,000/- each on the Appellant No.2 and 3, both are the Directors of the Appellant No.1 Company.

2. After hearing both the sides and on perusal of the records, the ld. Advocate on behalf of the Appellants contested the demand of duty on merit as well as on limitation. The ld. Advocate also drew the attention of the Bench to the relevant Bills of Entry and DFRC licence. It is seen that the Appellant imported "Pyrolitic Blue Float Glass (Glazing Glass)" as declared in the Bills of Entry. It is revealed from the backside of the Bills of Entry that the Customs Officers examined the goods and it was found Green Reflective Float Glass. The main contention of the ld. Advocate is that the appellants declared the goods in the declaration and there is no suppression of facts with intent to evade payment of duty. So, the entire demand of duty is barred by limitation. The ld. DR contended that the Appellants misdeclared the description of the goods "float Glass" and therefore, the demand is not hit by limitation.

3. On perusal of the impugned order, it is seen that the goods were assessed as per parameter of DFRC licence, which were examined by the Customs Officers and it was tallied with the description as the details given in the DFRC licence. So, the goods have been found to be as per DFRC licence and, therefore, charge of misdeclaration of the goods is not sustainable. The Commissioner ~~(Appeals)~~ merely observed that the Appellants had mis-declared the description of the goods "float glass". On perusal of the Bill of Entry and other documents, we do not find any merit in the findings of the Commissioner (Appeals). So, we find that the demand of duty is barred by limitation. Therefore, the demand of duty and penalties are not sustainable. Accordingly, the impugned orders are set aside on limitation without going into the merit. All the appeals are allowed with consequential relief.

[Order pronounced in open court on 27.08.08]

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.