

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

Appeal No. C/898 /2005 - CU[DB]

Date 11/11/2008

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

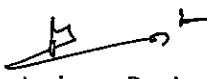
To :
M/S METRO & METRO
5/170, HALWAI KI BAGICHI, MATHURA ROAD, AGRA
- M/S METRO & METRO

Appellant
Vs
Respondent

THE COMMISSIONER OF CUSTOMS, NEW DELHI

I am directed to transmit herewith a certified copy of Final order No. C/588/08-CUS. DATED 07.11.08

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, NEW DELHI
NEW CUSTOM HOUSE, IGI AIRPORT, NEW DELHI

2. Adv. / Consult

MR.V.LAKSHMI KUMARAN

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 Publications (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

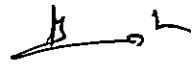
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thvagarava Road, T. Nagar, Chennai

13 Taxindiaonline.com Pvt.Ltd, B-XI/8183, Vasant Kuni, 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 & SERVICE
TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM,
NEW DELHI**

COURT – II

CUSTOMS APPEAL NO. 898 OF 2005

[Arising out of Order-in-appeal No. CC(A)/393Delhi-I/2005 dated 30.9.2005 passed by the Commissioner (Appeals), Customs, New Delhi]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
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?	
2.	Whether it would 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?	

M/s. Metro & Metro

Appellants

Vs.

CC, New Delhi

Respondent

Appearance:

Shri Ravi Raghavan, Advocate for the appellants,
Shri R.K. Verma, JDR, Departmental Representative, for the Revenue

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 13th June, 2008

FINAL ORDER NO. C/588/08 dated 7/11/08

Per S.S. Kang:

The appellants filed this appeal against the impugned order whereby benefit of Notification No. 21/2002 was denied in respect of X-ray Shoe Inspection System.

2. Brief facts of the case are that the appellants made import of machine in question and claimed the benefit of notification No. 21/02-Cus at Srl. No. 224 of list 34 which provides concessional rate of duty for the goods specified in list 34 i.e. designed ^{for} use in leather industry or footwear industry and as per list 34 Viewing box for assessing visible damage are entitled for benefit of notification. The benefit of notification was denied on the ground that X-ray Shoe Inspection System imported by the appellants is used to inspect unseen and intangible nails of sole of shoes, boots and high heels. X-ray Shoe Inspection System imported by the appellants cannot be considered as Viewing Box for assessing visible damage for the shoes.

3. The contention of the appellants is that imported machine is also used to inspect the unseen and intangible nails in sole of shoes, boots, and high heels, etc. It also inspect, whether there is an unseen needle at needle work area. The contention is that as the machine in question is Viewing Box for assessing visible damage and in addition to it also

inspect shoes so that there shall not be any nail in shoes, boots, etc. The appellants relied upon the decision of the Hon'ble Supreme Court in the case of C.C. & C.E. vs. Lekhraj Jessumal & Sons, reported in 1996 (82) ELT 162 to submit that new processes and new methods developed from time to time and new material or types of components to be taken into account and words in the Tariff Schedule not to be interpreted ignoring the rapid march of technology as industry cannot be static. The appellants also relied upon the opinion given by Council of Leather Export vide letter dated 15th July, 2004. In response to the letter written by Asst. Commissioner of Customs the Council for Leather Export clarified that X-ray Inspection System is technologically upgraded form with increased capacity of the Viewing Box for assessing visible damage for the shoes. In view of this contention of the appellants is that they are entitled for the benefit of the notification.

4. Contention of the Revenue is that benefit of notification is available for Viewing Box for viewing visible damage for shoes. In the present case the machine is for inspection of unseen presence of nails and needle at needle work area, by way of X-ray therefore, machine in question is not entitled for benefit of notification.

5. We find that notification provides concessional rate of duty for Viewing Box for assessing visible damage. In the present case the appellants described the imported item as X-ray Shoe Inspection System. From the literature we find the machine in question is X-ray

Inspection System for shoes and the same is used to inspect for unseen, unwanted nails. We find that the Hon'ble Supreme Court in the case of Lekhraj Jessumal & Sons (supra) relied upon by the appellants allowed the benefit of notification in respect of reed switches for use in electronic hearing aids where benefit of notification was denied on the ground that import licence does not cover reed switch. The benefit was denied on the ground that switches as components of hearing ~~need~~ ^{as a} should be understood to mean only those type of switches which were generally used in the manufacture of hearing aid at the time of publication of import policy. The facts of the present case are different. In the present case machine imported by the appellants is an X-ray Shoe Inspection System whereas notification provides concessional rate of duty to Viewing Box for assessing visible damage. Therefore, the ratio of the above decision is not applicable on the facts of the present case. Further, we find that CLRI vide letter dated 27.7.2004 opined that viewing box for assessing visible damage did not have X-ray provision. In the X-ray Shoe Inspection System shoe can be put in cabinet and can be viewed on a screen attached with the system as mentioned in the letter dated 28.12.2004 of Central Footwear Training Institute. Further, we find that the Hon'ble Supreme Court in the case of Novopan India Ltd. vs. CCE & C, Hyderabad, reported in 1994 (73) ELT 769 (SC) held that a person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered

by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. In the present case as machine in question does not fall under the category of Viewing Box for assessing visible damage, therefore, we find no infirmity in the impugned order. Appeal is dismissed.

(Pronounced on 07-11-2008)

(S.S. KANU,
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 27th October, 2008
RK