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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/58 /2006 - CU[DB] Date 11/12/2008

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

To :
M/S LG ELECTRONIC INDIA(P)LIMITED
PLOT NO-51 UDYOG VIHAR, PHASE-II, SURAJ PUR
KASNA ROAD, GAUTAM BUDH NAGAR (UP)
M/S LG ELECTRONIC INDIA(P)LIMITED Appellant

Vs

COMMISSIONER OF CUSTOM (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/644/08-CUS. DATED 28.11.08** 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
   COMMISSIONER OF CUSTOM (IMPORT & GENERAL)
   NEW CUSTOM HOUSE, NEAR IGI AIRPORT NEW DELHI
   110037
2. Adv. / Consult
   MR.MOHAN LAL, B-67,FLATTED FACTORIES COMPLEX,
   OKHLA PHASE-III, NEW DELHI
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, COURT NO. III

Customs Appeal No. 58 of 2006

[Arising out of Order-in-Appeal No. CC(A)/421/ACU/D-1/2005 dated 26.10.2005 passed by Commissioner of Customs(Appeal), Delhi-I]

For approval and signature:

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

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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? : NO
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. L.G. Electronics India(P) Ltd. Appellant

Vs.

Commissioner of Customs Respondent
New Delhi

Appearance:

Mr. Mohan Lal, Advocate for the Appellants
Mr. Sunil Kumar, DR for the Respondent

CORAM:

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

Date of Hearing /Decision: 28.11.2008

Final **ORDER NO. C/ 644/08**

Per M. Veeraiyan (for the Bench):

This is an appeal against the order of the Commissioner (Appeals) No. CC(A)/421/ACU/D-1/2005 dated 26.10.05.

2. Heard both sides.

3. The appellant imported "liquid crystal display" which are parts of monitor for computer and claimed classification under Chapter heading 84733099 and also claimed the benefit of notification No. 21/2002-cus.(the entry in Serial No. 276 of the notification). The original authority held that the imported part was an assembly meant to be used as part of monitor which contained the populated PCB; that it was covered by the exclusion clause of the notification. Accordingly, she denied the benefit of exemption on the ground that the imported item contained populated PCB. To come to the above conclusion, she relied on the mainly three evidences. She relied on the material on the internet as evidence and has discussed elaborately as to how the LCD module was assembled through processes like TFT processes, colour filter process and module process. She also relied on the report of the examination the officers according to which there was a PCB contained in the imported product. She has also recorded her findings after personally seeing the sample herself. The Commissioner (appeals) has concurred with the order of the original authority.

4. The learned advocate submits that the product imported by them cannot be treated as 'assembly'; that the imported product does not contain the PCB. Even it is held to contain the PCB, the said PCB can not be considered as populated PCB. According to him, the PCB becomes populated PCB only when active items components 'diode, transistor and rectifiers' are added to the PCB. He relied on the definition and technical literature and certificates, and also on HSN notes in support of his claim. He also submits that the product, liquid crystal display is an integrated product and hence cannot be treated as 'assembly'.

5. Learned DR made the following submissions:-

He drew our attention to page 34 of the appeal book which contained the catalogue relating to the imported product, 'liquid crystal display' manufactured by LG Phillips LCD and submits that it is more than a mere PCB. It is not merely printed circuit board but contains other components mounted on it. He also submits that the declaration given by the Company contained in page 35 claiming that what was imported by them is a passive device is factually incorrect.

6. We have carefully considered the submissions from both the sides. The examining officers, prima facie, came to the conclusion that there was a PCB and the consignment was provisionally released to enable further inquiry. The appellant is relying on a report of Department of Electronics which they claim is in their favour. The appellant has produced the catalogue before us and which is being relied on by the learned

DR in support of his submissions. We find the original authority has gone by material in internet, the preliminary finding of the examining officers. The catalogue(now being relied by the DR) relating to very same imported product, perhaps, was not placed before the original authority and at any rate the same has not been considered. It is also submitted by the learned advocate that samples drawn are still available with the department.

7. Under these circumstances, we feel that the matter should be looked into afresh on the basis of catalogue relating to the imported product and, if necessary, by taking expert opinion on the samples. To enable the same, we set aside the orders of the authorities below and remand the matter to the original authority. The appellant is permitted to produce the evidence in their support within 30 days from the date of receipt of this order and thereafter the original authority should decide it within three months after giving a reasonable opportunity of hearing to them.

8. The appeal is allowed by way of remand on the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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