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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/73 /2006 - CU[DB] Date 11/12/2008

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

To :
M/S HEYNEN INDIA LTD.
POLAR HOUSE A-105 SECTOR-5
NOIDA – 201 301

M/S HEYNEN INDIA LTD. Appellant
Vs
COMMISSIONER OF CENTRAL EXCISE DELHI-III Respondent

I am directed to transmit herewith a certified copy of **Final order** No. C/650/08-CUS. DATED 26.11.08 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 CENTRAL EXCISE DELHI-III
VANIJAY NIKUNJ UDYOG VIHAR PHASE V GURGAON (HARYANA)
2. Adv. / Consult J.M. SHARMA, CONSLT.
SQ-96, BASANT ENCLAVE, NEW DELHI-57.

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
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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:26.11.2008

Customs Appeal No.73 of 2006

Arising out of the order in original No.19/2004 dated 30.4.2004 passed by the Commissioner, Central Excise, Delhi III, Gurgaon.

For Approval and Signature:

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

1	Whether Press Reporter 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 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant | | Respondent
M/s Heynen India Ltd. | vs. | C.C.E, Delhi III

Appearance:

Shri J.M. Sharma, Consultant for the appellant
Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue

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

Final Order No. C/650/08

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellant is a 100% EOU, manufacturing hand tools in bonded warehouse. They were granted letter of permission on 21st October, 1986. The unit was debonded in principle by the Development Commissioner vide his letter dated 7.7.2000. Superintendent of Central Excise by letter dated 6.1.2001 directed them to deposit the customs duty on capital goods of Rs.12,52,905/- and central excise duty of Rs.1,37,293/- on indigenous capital goods and Rs.3,81,444/- on unused imported raw materials on provisional basis. The appellant deposited the said duty and cleared the goods on 2.5.02. Show cause notice was issued proposing demand of duty about Rs.67 lakhs. In the impugned order, the Commissioner of Central Excise, modified the demand of duty and directed the appellant to pay differential duty of Rs.1,65,618/- on the imported capital goods and Rs.3,81,444/- on the unused raw materials along with interest. He also held that capital goods are liable to confiscation u/s 111(j) and 111 (o) of the Customs Act and imposed redemption fine of Rs.5 lakhs in lieu of confiscation and also imposed penalty of Rs.2 lakhs u/s 112 of the Customs, 1962.

2. After hearing both sides and on perusal of the record, we find that the learned Advocate is not seriously challenging the demand of differential duty on capital goods and unused raw material. It is seen from letter dated 6.9.2001, in response to the application for de-bonding and subsequent assessment of central excise duty, the Superintendent of Central Excise provisionally assessed the duty. The appellant also deposited the entire amount of duty in terms of the provisional assessment. The demand of duty of Rs.1,65,608/- is the differential duty arising out of the final assessment of duty. We have noted that the appellant applied for ~~abandonment~~ remission of duty on the unused raw material u/s 23 of the Customs Act, 1962. It has been observed by the Commissioner that the goods can be abandoned before the order for clearance of the goods for home consumption u/s 47 or warehousing u/s 60 has been made. It has further been observed that in the instant case the goods were already warehoused and therefore, Section 23 is not applicable. In this event, we do not find any reason for confiscation of the goods and imposition of penalty. Demand of duty is arising out of the final

assessment of goods and rejection of remission of duty. Therefore, confiscation of goods and redemption fine are not sustainable and penalty also is liable to be set aside.

3. In view of the above discussion, the demand of duty is upheld. Confiscation and imposition of fine and penalty are set aside. The claim of the learned Advocate is that the payment of interest is not sustainable in view of Notification No.67/95-Cus (NT) dated 1.11.95 and Notification No.18/03-Cus dated 1.3.2003. We direct the adjudicating authority to examine the claim of the appellant in respect of payment of interest in the light of the above Notifications. The appeal is disposed of in above terms.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

scd/