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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/103 /2007

Date 07/03/2008

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

To :
C.C, AMRITSAR.
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR-143001

C.C, AMRITSAR. Appellant

Vs

ETCO TELECOM LTD. Respondent

I am directed to transmit herewith a certified copy of Final order No. C/34/08 Customs dated 07.02.08 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
   ETCO TELECOM LTD.
   142, ANDHERI INDUSTRIAL ESTATE, OFF: VEERA
   DESAI ROAD, ANDHERI (W) MUMBAI – 53.
2. Adv. / Consult M/S VERMA KANT & ASSOCIATES,
   704, NILGIRI APPTS.,
   9, BARAKHAMBA ROAD, 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. 43, saket, New
7. M/s Centax Publictions (P) Ltd., 1512-E, Bhishm Pitamah
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301
9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,
12. Co, Law Institution
13. TAX INDIA, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
NEW DELHI, COURT NO.I

Customs Appeal No. 103 of 2007

[Arising out of Order-in-Appeal No.490/CUS/APPL/2006 dated 23.10.06 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing: 07.2.2008
Date of Order : .02.2008

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. A.K. Srivastava, 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 should 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? :

CC, Amritsar — Appellant

Vs.

ETCO Telecom Ltd. — Respondent

Appearance:
Mr. R.C. Sankhla, Authorized Representative(DR) for the Appellant
Mr. K. Kant, Advocate for the Respondent

CORAM: Mr. Justice S.N. Jha, President
Mr. A.K. Srivastava, Member (Technical)

Final **Order** No C/34/08

Per Justice S.N.Jha:

This appeal by the Department is directed against part of the order-in-appeal of the Commissioner (Appeals), Central Excise, Jalandhar dated 23.10.2006 allowing DEPB (Duty Entitlement Pass Book) benefit with respect to Cot Cards. The case of the Department is that the impugned part of the appellate order is beyond the scope of the remand order of this Tribunal and therefore, fit to be set aside.

2. Before referring to the order of this Tribunal it would be appropriate to notice briefly the facts of the case. Briefly stated, the respondent exported various items describing them as 'Telecommunication Equipments' under Shipping Bill No.22/2001 dated 31.3.2001 on a white Shipping Bill. Later, on 20.4.2001, it requested the Commissioner of Customs for conversion of the Shipping Bill under the DEPB Scheme. The Commissioner granted permission subject to fulfilment of conditions of the ExIM Policy 1997-2002. The respondent then applied to the Joint Director-General Foreign Trade(DGFT) seeking ~~the~~ necessary orders. The DGFT asked the respondent to get the 'Serial Number' of the DEPB Scheme under which benefit was being claimed in respect of the goods in question from the customs authorities. The Deputy Commissioner, Raja Sansi International Airport, Amritsar by letter dated 12.2.2002 informed the respondent that Sr. No.39 of Product 83 refers to 'Telecommunication Transmission Equipment whereas the respondent had described the goods in the Shipping Bill as 'Telecom Communication Equipment' and therefore, FOB value cannot be artificially split up in terms of Circular No.6/2001 in order to extend DEPB benefit on the 'Telecom Transmission Equipment'. The case of the Department is that in terms of Board's Circular No.02/2001 dated 15.1.2001, spare parts of 'Telecom Transmission Equipments' are not entitled to DEPB benefit under Sr.No.39 of Product 83.

3. Feeling aggrieved by the said order of the Deputy Commissioner, the respondent filed appeal before the Commissioner (Appeals) contending, inter alia, that the words 'Communication' and 'Transmission' are

synonymous having the same meaning, and Circular No.2/2001 dated 15.1.2001 and Circular No.6/2001 dated 5.2.2001 are not applicable. The Commissioner (Appeals) vide order dated ~~16~~15.10.2004, held that certain articles (which were subject of ~~shipment~~ shipping bill) are covered by description of 'Telecom Transmission Equipment' falling under sr.no.39 of product group 83 and, therefore, the DEPB benefit could be claimed in respect of them. Certain other articles were held to be not classifiable as 'Telecom Transmission Equipment' under Sr. No.39 of product group 83 as they were found to be 'Telecom Access Equipments'. The spares of these products were also found to be not eligible for DEPB benefit as spare parts have specifically been excluded from the description of product as 'Telecom Transmission Equipment'. He held that DEPB benefit under Sr. No.39 of product 83 is available only in respect of equipments categorized as 'Telecom Transmission Equipments. In this manner the appeal of the respondent was partly allowed.

4. Against the said part of the order dated 15.10.2004, the respondent filed appeal before this Tribunal. In support of its case, the respondent submitted the opinion of Prof Girish Kumar of Electrical Engineering Department of IIT, Mumbai to the effect that any equipment used for telecommunication is nothing but transmission equipment which transmits or communicates over to a distance. It is relevant to mention here that the said opinion was given in respect of only three items. On consideration of the matter, on 18.11.2005 the Tribunal passed the following order :-

> "We find that the communication dt.9.12.04 from Prof. Girish Kumar of I.I.T., Mumbai is a piece of new evidence and the Commissioner (Appeals) had no occasion to consider the same while passing his impugned order-in-appeal. I n our opinion, it is a fit case for remanding back to the Commissioner (Appeals) to consider the Technical Opinion Certificate and pass order afresh in respect of the three items –in-question. It is directed that the Commissioner (Appeals) will decide the matter after affording full opportunity to the appellants and observing the

Principles of Natural Justice. As the ld. Counsel informs that before 31.12.05, the Customs Notification No.89/05 dt.4.10.05 'Duty Entitlement Pass Book' granting benefit comes to an end, the Respondents will take urgent action to arrange for re-examining the whole matter as directed above. The appeal is allowed by way of remand."

5. On receipt of the remand order the Commissioner (Appeals) held vide his final order dated 23.10.2006 that the equipments such as HF-8 ASCS (Analogue Subscriber Carrier System), Line Concentrators and Digital Pair Gain System can be considered as 'Telecom Transmission Equipments' in view of the aforementioned technical opinion of Prof Girish Kumar, and the respondent was therefore entitled to DEPB benefit in respect of the said items under Sr. No. 39 of product 83. However, having thus allowed the claim of the respondent in respect of the said three items, the learned Commissioner proceeded to consider the question as to whether the respondent was also entitled to the benefit of the DEPB Scheme on Cot Cards. Observing, inter alia, that spare Cards are part and parcel of the Telecom Transmission Equipments and not independent unit, the Commissioner held that the DEPB benefit under Sr.No.39 of product group 83 was available also in respect of Cot Cards, Spare Cards exported as component parts of Telecom Transmission Equipments.

6. It was submitted on behalf of the Department that in view of the scope of the remand order it was not open to the Commissioner to adjudicate upon the admissibility of DEB benefits on Cot Cards and spares. The impugned finding as regards Cot Cards etc. therefore, should be set aside. It was submitted that the remand order clearly stated that the Commissioner (Appeals) was to pass fresh orders in respect of three items in question in the light of the technical opinion certificate of Prof Girish Kumar, and the

Commissioner had no jurisdiction to touch other issues or items in respect of which adjudication had already been made earlier.

7. On behalf of the respondent it was submitted that whenever the case is remanded to the lower authoritv, the authority has to decide all issues. It was submitted that the respondent/assessee was in appeal before this Tribunal against findings on all the issues which were adverse to it and it was the mistake of the Tribunal not to decide other issues; the respondent is, therefore, entitled to not only the support of the finding in respect of the three items in question but also argue on the admissibility of DEPB benefit for other items which were subject matter of the previous appeal. After the hearing concluded, the respondent filed written submissions in which after narrating the sequence of events leading to the present appeal, case of the respondent has been discussed on merit and attempt has been made to justify the impugned part of the Commissioner's order.

8. The point for consideration is whether on remand from this Tribunal, it was open to the Commissioner to consider other issues relating to admissibility of DEPB benefit for other items. A bare perusal of the Tribunal's order leaves no room for doubt that it was not an open remand nor, indeed, the impugned order of the Commissioner dated 15.10.2004 was set aside. Without setting aside the order, the Tribunal directed the Commissioner to consider the admissibility of DEPB benefit with respect to three items in question in the light of the technical opinion of Prof Girish Kumar. It was undoubtedly a limited remand. We, therefore, find force in the plea of the Revenue that having regard to the limited scope of the remand order, it was not open to the Commissioner to dwell upon and adjudicate other issues. May be, as contended on behalf of the respondent, the respondent's appeal before this Tribunal was against adverse findings on

different issues and items but if the respondent was not satisfied with the scope of the remand order and it thought that other issues should also be adjudicated by the Commissioner, on remand, it should have sought modification or clarification of the order dated 18.11.2005 from this Tribunal. For the same reason, it is not open to this Bench to find fault with the said order. It was also not open to the Commissioner(Appeals) to go behind the previous order dated 15.10.2004 which had not been set aside or modified by this Tribunal, and record a different finding on other issues/ items. We are, therefore, of the view that the impugned order of the Commissioner so far it relates to the question of admissibility of DEPB to Cot Cards etc. is fit to be set aside.

9. In the result, the aforementioned impugned part of the order of the Commissioner (Appeals) dated 23.10.2006 is set aside and the appeal of the appellant to that extent is allowed.

[Justice S.N. Jha]
President

[A.K. Srivastava]
Member [Technical]

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