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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/908 /2005 Date 08/07/2008

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

To :
M/S VISWANADHA INSTITUE OF TECHNOLOGY OF
MANAGEMEN, VISWANADHA NAGAR.
PARVATHIPURAM, (VIZIANAGARAM DISTRICT)
(ANDHRA PRADESH) – 535502.

M/S VISWANADHA INSTITUE OF TECHNOLOGY OF MANAGEMEN — Appellant

Vs

THE COMMISSIONER OF CUSTOMS. NEW DELHI — Respondent

I am directed to transmit herewith a certified copy of Final order No.C/161/08-CUS. DATED 16.06.08

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

NEAR I.G.I.AIR PORT, NEW CUSTOM HOUSE, NEW DELHI
110037

2. Adv. / Consult MR.M.V.S.APPA RAO
RANGREZ STREET,
VISAKHAPATNAM-530001

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 Delhi -
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 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Office Copy
15. 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. 908 OF 2005

[Arising out of Order-in-Appeal No. CC(A)/322/2005 dated 29.7.2005 passed by the Commissioner of Customs (Appeals), Delhi-I, New Custom House, 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?	[illegible]
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	[illegible]
3.	Whether their Lordships wish to see the fair copy of the order?	[illegible]
4.	Whether order is to be circulated to the Departmental authorities?	[illegible]

M/s. Viswanadha Institute of Technology of Management — Appellants

Vs.

C.C., ICD, Tughlakhabad, New Delhi — Respondent

Appearance:

Shri S.V. Ratnam, Advocate for the appellants;
Shri B.K. Singh, Departmental Representative for the Revenue.

Coram:

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

Date of Hearing: 16th June, 2008

FINAL ORDER NO. C/16/08 **dated** 16/6/08

Per S.S. Kang:

Heard both sides.

2. The appellants filed this appeal against Order-in-Appeal passed by the Commissioner (Appeals) whereby benefit of notification No. 51/96-Cus dated 23.7.1996 was denied and demand was confirmed. The goods imported by the appellants were also ordered to be confiscated and for the release of the goods redemption fine is imposed. Personal penalty was also imposed.

3. Brief facts of the case are that the appellants is an educational institute and affiliated to Jawaharlal Nehru Technological University, Hyderabad. The appellants asked for essentiality certificate and the University issued the same. On the basis of essentiality certificate issued by the University, the appellants made import of LCD Projector by claiming benefit of notification No. 56/96 and the benefit was allowed. Subsequently, the university withdrew the essentiality certificate. As the essentiality certificate was withdrawn the Customs authorities issue a show cause notice for recovery of custom duty and for confiscation of the goods.

4. The Adjudicating authority confirmed the demand and confiscated the goods and imposed redemption fine and penalty.

5. Contention of the appellants is that at the time of import they were having essentiality certificate issued by the university to the effect that the goods in question are essential for imparting technical education program and subsequently withdrawn the essentiality certificate on the ground that the college should be recognized as PHd research centre whereas the appellants are not recognized as PHd research centre. Therefore, subsequent withdrawal of essential certificate will not effect the import.

6. Further contention of the appellants is that there is no suppression or mis-representation for availing the benefit of notification, therefore, imposition of redemption fine is not sustainable.

7. Contention of the Revenue is that the benefit of notification was allowed in view of the essentiality certificate issued by the university and since the certificate was subsequently withdrawn, benefit of notification was rightly denied.

8. We find that the appellants availed the benefit of notification NO. 51/96 on the basis of essentiality certificate issued by the university. Essentiality certificate was subsequently withdrawn as the appellants are not recognized as PHd research centre or for P.G. level courses in engineering, etc. In these circumstances as the appellants were not entitled for the benefit of notification, therefore, we find no infirmity in the impugned order whereby benefit of notification was denied and demand of custom duty was confirmed. However, taking into

consideration the fact that the appellants were having essentiality certificate at the time of import we hold that the goods are not liable for confiscation and for imposition of penalty. Therefore, confiscation of goods and imposition of penalty is not sustainable, hence set aside. Appeals are disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 18th June, 2008
RK