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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/578 /2005 Date 18/07/2008

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

To :
M/S CAPITAL POWER SYSTEMS LTD
B-38 TO 40, SECTOR-IV, NOIDA,
DIST.-G.B.NAGAR, U.P.

M/S CAPITAL POWER SYSTEMS LTD — Appellant

Vs

THE COMMISSIONER OF CUSTOMS(I&G), NEW DELHI — Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/204/08-CUS. DATED 11.07.08** passed by the Tribunal under Section 129, (B) of the Customs Act.1962 & Financial Act 1994 relating to Service Tax

9

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
   THE COMMISSIONER OF CUSTOMS(I&G),
   NEW CUSTOM HOUSE, NEW DELHI
2. Adv. / Consult MR.BRAHMADUTTA CHAMBERS OF LAW
   111-112, G.C. COMPLEXS, NAYA BANS,
   SECTOR-15, OPPOSITE NIRULA'S HOTEL, NOIDA.
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, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Custom Appeal No. 578 of 2005

(Arising out of Order-in-Appeal No. CC(A)/106/ACU/D-I/2005 dated 28.2.2005 passed by the Commissioner of Customs (Appeals), 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 Capital Power Systems Ltd. — Appellant

Vs.

CCE, New Delhi — Respondent

Appearance:
Written submission - For appellant
Shri A.K. Madan, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 11.7.2008

Final Order No. C/204/08 dated 11/7/08

Per S.S. Kang:

Heard ld. DR. The appellant made a request to decide the appeal on merits. In this case, the appellant filed appeal whereby benefit of Notification No. 80/70 dated 29.8.70 was denied.

2. The main contention of the appellant in the written submission is that they made import of certain goods from China which are covered under invoice, when the consignment was tested in the factory certain goods were found defective and the same were exported for replacement. When the supplier replaced and sent the consignment the ~~shipping bill~~ Bill of entry was filed ~~and~~ claiming the benefit of notification on the ground that the defective are being returned as free replacement/repair. The contention is that the benefit was denied on the ground that the goods imported are not private personal property. The company is also legal person, therefore, the goods in question are personal property of the company, therefore, the benefit of notification was wrongly denied.

3. Ld. SDR appearing on behalf of the Revenue submitted that the issue regarding benefit of this notification is already decided by the Tribunal in the case of **CC Vs. Goodyear India Ltd.** reported in 1991 (51) ELT

353 and in the case of **Cincinnati Milacron Ltd. Vs. CC** reported in 2003 (153) ELT 181 in favour of the Revenue, therefore, the impugned order is rightly passed.

4. In this case, benefit of Notification No. 80/70 was denied. We have gone through the provisions of notification, the notification provides exemption from payment of duty in respect of the defective articles were brought into India earlier from places outside India and are private personal property of the importer. This issue is decided by the Tribunal in the case of **CC Vs. Goodyear India Ltd.** (supra). The Tribunal held that exemption is admissible only if goods imported as replacement of individual's property, personal property and not property of firm. Further, we find that the repairs including replacement of the defective parts are to be done free of charge by the manufacturer through his agent or branch in India. We find that the Tribunal in the case of **Cincinnati Milacron Ltd.** (s) while interpreting the provisions of this notification held that benefit of notification in case repair or replacement has not ~~sent~~ made through his agent or branch in

India of the manufacturer the benefit of this notification is not available. The appeal filed by the assessee against this decision was dismissed by the Hon'ble Supreme Court reported as 2005 (153) ELT A-117. In view of the above decision, we find no infirmity in the impugned order. The appeal is dismissed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM