TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/614 /2005 Date 24/07/2008

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

To :
M/S DELTRON LTD
132, INDUSTRIAL AREA, CHANDIGARH

M/S DELTRON LTD Appellant
Vs
THE COMMISSIONER OF CUSTOMS, DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/238/08-CUSTOMS DATED 19.06.08** 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,
(I&G), NEW CUSTOMS HOUSE, NEW DELHI
2. Adv. / Consult MR.PAWAN KUMAR PAHWA, ADV.
MASTAN & CO. ATTORNYS & SOLICITORS,
C-5/9, SAFDARJUNG DEVELOPMENT AREA,
OPP. IIT GATE, 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 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 600017
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 – 110 066.
Principal Bench, New Delhi

COURT NO. II
Customs Appeal No. 614 of 2005

[Arising out of the Order-in-Appeal No. (CC (A)/147/ACU/Delhi-I/2005 dated 31/03/2005 passed by The Commissioner of Customs (Appeals), (I&G), New Delhi.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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 Department Authorities?	:

M/s Deltron Ltd. Appellant

Versus

CC, Delhi Respondent

Appearance

Shri Rakesh Kumar, Advocate – for the appellant.

Shri B.K. Singh, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 19/06/2008.

Final Order No. C/228/08 Dated : 19/6/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order passed by Commissioner (Appeals). Brief facts of the case are that appellant ~~made~~ exported PC base assemblies. Certain quantity of PC base assemblies were found defective and are re-exported into India for repair purposes. The bill of entry regarding these re-import was filed on 03/04/2002 and the appellant claim the benefit of Notification of 158/95 dated 14/11/95 and also executed a bond. Goods were cleared from the customs area on 24/04/02. Thereafter the goods were re-exported on 07/10/2002. As per the condition of notification, the goods were to be re-exported within six months from the date of export or as the time extended by the Proper Officer. Revenue was of the opinion that as the goods were exported after the period of six months from the import, therefore, encashed the bank guarantee. The appellant filed refund claim and the same was rejected vide impugned order.

2. Contention of appellant is that goods were actually cleared from the customs area on 24/04/02 and same were re-exported on 07/10/02. The appellant ~~is~~ relied upon the Board Circular No. 14/97-CUS dated June 3, 1997, where it has been clarified that for the purpose of re-export, the time period is to be calculated from the date of actual clearance of the goods and not from the date of filing of the bill of entry. The contention is that as the goods were re-exported within six months from the date of actual clearance, therefore, the denial of benefit of notification was not sustainable. The contention of revenue is that date of import is filing of bill of entry. In the present case, the goods were exported beyond period of six months from the date of filing of bill of entry and appellant had not sought any extension, therefore, the benefit was rightly denied.

3. We find that board vide circular dated 03/06/97 clarified the position in respect of the Notification No. 158/95-CUS.

The Board clarified that the time period for six months is stipulated in the notification for the purpose of re-export is to be calculated from the date of actual clearance of the goods and not from the date of filing of bill of entry. In view of this clarification, we find as the goods were re-exported within six months from the date of clearance, therefore, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

PK