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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/189 /2007 Date 18/08/2008

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

To :
C.C. NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI
C.C. NEW DELHI Appellant
Vs
M/S OVERSEAS BUSINESS CORP. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/310/08 dated 5.8.08

pa 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 :
spondent
I/S OVERSEAS BUSINESS CORP.
30, SECTOR 16, NOIDA, UP
v. / Consult
R.AJAY AGGARWAL
OCK A,141 DEFENCE COLONY, NEW DELHI
S.D.R.
J.C.D.R.
Bar association, CESTAT, New Delhi
M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
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. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Customs Appeal No. 189 of 2007

[Arising out of Order-in-Appeal No. CC(A)/163/ICD/D-II/2006 dated 28.12.2006 passed by Commissioner of Customs (Appeals), Delhi II]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters 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 the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
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

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Commissioner of Customs
New Delhi — Appellant

Vs.

M/s. Overseas Business Corpn. — Respondent

Appearance:

Shri R.K. Verma, DR for the Appellant
Shri Prabhat Kumar, Advocate for the Respondent

CORAM:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 5.8.2008

Final **ORDER NO. C/310/08**

Per M. Veeraiyan (for the Bench):

This is an appeal filed by the Department against the order of the Commissioner (Appeals) No. CC(A)/163/ICD/D-II/2006 dated 28.12.06.

2. Heard both sides. The relevant facts, in brief, are as follows:-

(a) The respondents imported items declared as "CD Pick up lens unit' and 'optical pick up assembly' and cleared them after furnishing a certificate given by Central Excise authorities in terms of procedure set out in the Customs (Import of Goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996.

(b) The concessional rate of duty was sought to be denied by the Customs authorities on the ground that what they imported was not parts as claimed by them but it was complete CD Deck mechanism.

(c) The doubt was entertained by the authorities based on an alert Circular issued by the CBEC No. 71/03-Cus dated 7.8.03. The circular brought to the notice the cases of some imports of CD Deck mechanism declaring and alerted the field formations to be vigilant against such attempt.

(d) The respondent, after clearing the items imported by them without availing the benefit of Notification No. 29/99-Cus dated 28.2.99 , filed refund claim which was denied by the original authority on the ground that such exemption would be available only after amendment of the said Notification by Notification No. 70/2004-Cus. dated 9.7.2004. He also held that respondent's CHA had given written consent to forego the benefit of notification and therefore protest had no meaning.

(e) The Commissioner (Appeals) held that the respondents are eligible for benefit of the Notification and set aside the order of the original authority.

3. When the matter was heard on earlier occasions, we directed the Departmental Representative to produce the original clearance documents to see whether the claim of the importer that they have claimed the benefit of Notification No. 25/99 and the payment of higher duty was under protest. The original documents produced by the DR indicated the following remarks:

> "Sir,
> Party has produce the Central Excise Certificate For the Benefit against Ntfn.No. 25/99. However the Benefit of ntfn Not given to Party. Therefore Party is paying Full duty under PROTEST.

Therefore, we are of the view that the duty has been paid by the importer under protest.

4.1. The remaining dispute relates to whether what they had imported was complete CD Deck mechanism as claimed by the Department or parts thereof, as claimed by the importer. If they are considered as parts, then they are eligible for exemption other wise not.

4.2. As the import itself has taken place on the basis of certificate given by the Central Excise authorities for import of goods under concessional rate of Customs duty for use in the manufacture of excisable goods, we directed that a report on the factual position as to the nature of imported materials received in the factory and whether any additional materials (other than what was imported in the disputed bills of entry) were used in the manufacture.

4.3. Now we have received the report through learned DR and the relevant portion of the report dated 17.4.08 is reproduced below:-

"As desired the receipt and utilisation of the goods imported by M/s. Overseas Business Corporation A-30 Sector 16 Noida against B/Entry mentioned in your aforesaid letter has been verified from the records i.e. stock register of inputs and stock register of finished goods maintained by the unit.

The desired report is as under-

(i) goods against following B/E have been received and used in the production of CD Deck Mechanism

B/E No.	Dt. of receipt	quantity
366460 dt.30.9.03	10.10.03	30000 pcs
367750 dt.29.10.03	30.10.03	32000 pcs
368048 dt. 4.11.03	6.11.03	24000 pcs
368835 dt. 18.11.03	20.11.03	10000 pcs
369273 dt.25.11.03	3.12.03	27000 pcs
369869 dt. 5.12.03	11.12.03	32000 pcs

The goods imported against B/E no. 371187 dated 30.12.03 have not been received in the factory premises.

(ii) The said goods received in the factory premises have been used in the manufacture of complete CD Deck Mechanisms as per their records.

(iii) The other parts used for manufacture are CD Loader tray, CD Loader base, Micro motor, wires, cables and screws etc."

5. From the above, we find that the respondents has received not only the impugned goods but also procured materials like CD loader tray, CD Loader base, micro motor, wires, cables and screws etc. and assembled the complete CD deck mechanism. In view of the above, we have no hesitation to come to the conclusion that what has been imported by the respondent

were only parts and therefore, they were eligible for exemption under notification No. 25/99.

6. In view of the above, the appeal of the department fails on both the grounds. The appeal is therefore, rejected.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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