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

Appeal No. C/241 /2008-SM[BR]   Date 26/06/2008

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL)   Appellant
Vs
M/S SAMSUNG INDIA ELECTRONICS PVT. LTD.   Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1013 /2008-SM[BR] dated 28.5.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
   M/S SAMSUNG INDIA ELECTRONICS PVT. LTD.
   B-1, SEC-81, PHASE-II,
   NOIDA, (U.P.)
2. Adv. / Consult SHRI R.K. TEWARI ADV.
   B-67, FLATTED FACTORY COMPLEX OKHLA PHASE-III.
   NEW DELHI-110020
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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Customs Appeal No.241 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.CC(A)/CUS/I&G/D-I/08/2008 dated 7.1.2008 passed by the Commissioner of Customs (I &G), New Delhi]

Date of Hearing/ Decision:28.5.2008

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see 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? :

NO

CC, (I & G) ...Appellants
[Rep. by Shri B.S. Suhag, DR]

Vs.

M/s. Samsung India Electronics Pvt.Ltd. ....Respondent
[Rep. by Shri R.K. Tiwari, Advocate]

CORAM: **Mr. P.K. Das, Member (Judicial)**

Final Order No. 1013/08-SM(BR)/Dated:28.5.2008

Per P.K. Das:

Revenue filed this appeal against the order of the Commissioner (Appeals), whereby Adjudication Order was set aside and the refund of Rs.9,32,701/- was allowed.

2. Ld. DR on behalf of the Revenue submits that the Respondent filed Bill of Entry dated 21.11.2005 for consignment of 1200 pieces of LCD Panels for computer against four invoices all dated 18.11.2005. He further submits that after the goods have been cleared from the Customs port, the Respondent filed refund claim for non-receipt of the goods. He also submits that the Commissioner (Appeals) passed the order on the basis of the certificate by the Central Excise Superintendent. It is his submission that refund claim of the importer was made after out-of-charge of the goods from the Customs port and they failed to produce substantial evidence for short shipment.

3. Ld. Advocate on behalf of the Respondent submits that the Respondent submitted several evidences in support of the short shipment, which are recorded at page 8 of the impugned order. He further submits that the Respondent by letter dated 24.11.2005 requested the assessing officer for correcting the mistake in terms of Section 149 of the Customs Act, 1962. He drew the attention of the Bench to the copy of the Bill of Entry, wherein the Customs Officers recorded that importer's request for correction appears to be on merit. He also submits that the Commissioner (Appeals) examined the records as produced by the Respondent and thereafter allowed the refund claim.

4. After hearing both the sides and on perusal of the records, I find that the Respondent submitted various documents in support of the short shipment such as Bill of Entry, Supplier's letters, Export Air

Consolidation Manifest and the Central Excise Range Superintendent's Certificate. It is also noted that the Customs Officer in reply to letter dated 24.11.2005 of the Respondent recorded that the importer's request for correction appears to have merit. Commissioner (Appeals) has not discussed the evidences placed by the Respondent. Revenue contended that the Respondent failed to produce any substantial evidence for short shipment. I find that the Respondent submitted several evidences, which were not examined by the Commissioner (Appeals). So, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to examine the evidences. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 28.5.2008.

(P.K. Das)
Member (Judicial)

Ckp.