

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/289 /2008-SM[BR]

Date 25/08/2008

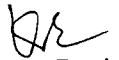
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SUPREME ELECTRO CAST PVT. LTD.
N-112, KIRTI NAGAR,
NEW DELHI.
M/S SUPREME ELECTRO CAST PVT. LTD.

Appellant
Vs
Respondent

C.C. (ICD) NEW DELHI

I am directed to transmit herewith a certified copy of Final order No. 1165 / 2008 -SM[BR] dated 18.7.2008
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

C.C. (ICD) NEW DELHI

ICD, TUGHLAKABAD, NEW DELHI 110020.

2. Adv. / Consult

MR.PRABHAT KUMAR

B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL 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 Publications (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

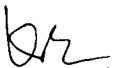
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar, Chennai 60017

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
(SM Appeal Branch)

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

PRINCIPAL BENCH NEW DELHI

Customs Appeal No.289 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.CC(A)/Cus/ICD/D-II/136/08 dated 20.03.08 passed by the Commissioner of Customs (Appeals), New Delhi]

Date of Hearing/ Decision:18.07.2008

For approval and signature:

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

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- | | | |
|--|---|------|
| 1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. | : | } 2. |
| 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? | : | |
-

M/s. Supreme Electro Cast Pvt. Ltd.

...Appellants

[Rep. by Shri Prabhat Kumar, Advocate]

Vs.

CC, Delhi

...Respondent

[Rep. by Shri S. Gautam, DR]

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

Final Order No. 1165/2008-SM(BR) Dated: 18.07.2008

Per P.K. Das:

The relevant facts of the case, in brief, are that the Appellants imported a consignment of LMS Scrap and filed Bill of Entry No.414327 dated 16.03.2005. They

deposited a sum of Rs.5,31,744/- against the said Bill of Entry vide TR-6 Challan dated 17.03.05. Subsequently, the Appellant abandoned the goods under Section 23 (2) of the Customs Act, 1962 by their letter dated 1.4.2005 contained in 8 containers. The Customs Authorities investigated the matter and found that the consignment contained of old and used tyres. The Commissioner of Customs by Order-in-Original dated 19.1.2006 confiscated the goods partly and refrained from imposing any penalty on the Appellant-Importer. Thereafter, the Appellant filed a refund claim on 26.02.2006. The Adjudicating Authority rejected the refund claim on the ground of time bar, which has been upheld by the Commissioner (Appeals).

2. Ld. Advocate on behalf of the Appellant submits that the Appellant applied for abandoned the goods under Section 23 of the Customs Act and, therefore, limitation will not apply in this case. He relied upon the decision of the Tribunal in the case of *Monika Electronics Pvt. Ltd. Vs. Collector of Customs – 1993 (66) ELT 204* (Tribunal). He further submits that the Commissioner of Customs already decided the matter in favour of the Appellant and, therefore, they are entitled to get the refund of the amount deposited against the Bill of Entry.

3. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that the Appellant had not filed the refund claim along with the application under Section 23 (2) of the Act. He further submits that the Appellant deposited the duty on 7.3.2005 and the application under Section 23 of the Act was filed on 1.4.2005 after seizure. So, the refund claim filed on 22.2.2006 is hopelessly barred by limitation.

4. After hearing both the sides and on perusal of the records, it is seen that the Appellant abandoned the goods under Section 23 (2) of the Customs Act before order of clearance of the goods for home consumption. Sub-section (1) of Section 23 provides that where it is shown to the satisfaction of the Asstt. Commissioner or Dy.

Commissioner of Customs that any imported goods had been lost or destroyed, at any point of time, before clearance for home consumption, the Asstt. Commissioner or Dy. Commissioner of Customs shall remit the duty on such goods. On a query of the Bench, the ld. Advocate submits that the application under Section 23 (2) of the Act is still pending. In my view, the refund claim cannot be decided till the decision of the application under Section 23 (2) of the Act. It is noted that the Appellant claimed refund of the duty against the imported goods, where they have relinquished their title. The Tribunal in the case of Monika Electronics Pvt. Ltd. (supra) held that duty is deposited in advance but imported goods are not traceable. The application for remission of duty made within six months is treatable as a claim for refund. In the present case, the application for the remission of duty is still pending and the refund claim cannot be disposed of, at this stage.

5. In view of the above discussion, the impugned order is set aside and the matter is remanded back to the Adjudicating Authority with a direction to decide the application under Section 23 (2) of the Customs Act and thereafter, the refund claim application will be decided in accordance with law. The appeal is allowed by way of remand.

Order dictated & pronounced in open court on 18.7.2008.

(P.K. Das)
Member (Judicial)

Ckp.