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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/595 /2008 – SM[BR] Date 05/12/2008

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

To :
C.C. (EXPORT) NEW DELHI
AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037

C.C. (EXPORT) NEW DELHI Appellant

Vs

M/S ASIATIC ELECTRICAL & SWITCHGEAR PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1589 / 2008 SM[BR]** dated 6.10.2008 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 ASIATIC ELECTRICAL & SWITCHGEAR PVT. LTD.
   A-58, NARAINA INDUSTRIAL AREA,
   PHASE-I, NEW DELHI.
2. Adv. / Consult SHRI A. K. MISHRA CONSULTANT
   B-25, LAJPAT NAGAR -III NEW DELHI – 24.
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 - 3
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
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-1
15. Office Copy
16. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

C/Appeal No.595/2008 -SM

(Arising out of order in appeal No. CC(A)/Cus/Exp/D.I/201/08 dated 22.5.08 passed by the Commissioner of Customs (Appeals), New Delhi)

For approval and signature:

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

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 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.

Yes

CC, Air Cargo, New Delhi — Appellant
(Rep. by Shri A.K. Rastogi, DR)

Vs

M/s Asiatic Electrical & Switchgear Pvt Ltd — Respondent
(Rep. by Shri A.K. Mishra, Advocate)

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

Date of Hearing: 6.10.08

Final Order No. 1589 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants filed Bill of Entry No.800819 dated 30.10.2007 declaring the goods as CT Operated

KWH Meter T-31-ATP-9 under Advance Licence. On examination, it was found that the description of the goods in the Bill of Entry did not tally with the Advance Licence. The Adjudicating Authority confiscated the goods in terms of Section 111(d) of the Customs Act, 1962. However, the appellant was given an option to redeem the goods on payment of redemption fine of Rs.50,000/- and penalty of Rs.65,000/- under Section 112 and Rs.50,000/- under Section 114-A of the Customs Act, 1962 subject to the appellant gets the advance licence amended to cover the goods. The appellant subsequently got the licence amended by the concerned authorities. The Commissioner (Appeals) set aside the adjudication order. Hence, the Revenue filed this appeal.

2. The learned DR on behalf of the Revenue reiterates the grounds of appeal. He submits that subsequent act/amendment in the licence by the DGFT after confiscation of goods and imposition of penalty by the adjudicating authority cannot cover the offence already done by the importer. He further submits that the goods were imported in absence of valid advance licence, and amended licence was not in existence either at the time of filing bill of entry or at the time of passing the adjudication order.

3. The learned Counsel on behalf of the respodents, reiterates the finding of the Commissioner (Appeals). He drew the attention of the Bench to para 2.26 of Chapter 2 of Foreign Trade Policy & Handbook of Procedures 2004-2009. He also relied upon the decision of the Tribunal in the case of Garware Wall Ropes Ltd Vs CC Mumbai reported in 2002 (145) ELT 308 (Tri.-Mum).

4. After hearing both the sides and on perusal of the record, it is seen that para 2.26 of Chapter 2 of Foreign Trade Policy & Handbook of Procedure states that the goods already imported/shipped/arrived, in advance, but not cleared from customs may also be cleared against an Authorization issued subsequently. It is revealed from the order of the Commissioner (Appeals) that the respondent got the licence amended from the Licencing Authority and the impugned goods were cleared against the amended licence without payment of duty. The relevant portion of the finding of the Commissioner (Appeals) is reproduced below:-

"From the above it is clear that the impugned goods are freely importable under Exim Code 90283010 and they were not meant for domestic market but were meant to be exported to Dubai and therefore are not covered under Serial No. 109 of appendix III to Schedule I of the ITC (HS) classification of Export and Import items. Moreover, the competent authority amended the licence and the adjudicating authority accepted it and released the impugned goods without levy of duty. Therefore, the present case is squarely covered by the Hon'ble CESTAT judgment in the case of Garware Wall Ropes Ltd Vs CC Mumbai 2002 (145) 308 (Tri-Mum)."

6. In the case of Garware Wall Ropes Ltd (supra), the Tribunal held that when the licence is issued by the Competent Authority, the Commissioner (Appeals) cannot negate the import. He cannot sit in judgment over the issue of the licence. In the present case, there is no dispute that the goods were cleared under the amended licence issued by the competent authority. Therefore, confiscation of goods and imposition of penalty are not sustainable. In view of that, I do not find any reason to interfere with the

order of the Commissioner (Appeals). Accordingly, the appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*