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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/511 /2008 – SM[BR] Date 04/09/2009

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 DYNAMIC LABORATORIES PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1111 / 2009 – SM[BR]** dated 25.8.2009 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 DYNAMIC LABORATORIES PVT LTD
   12/12, SHAKTI NAGAR, DELHI.
2. Adv. / Consult
   NONE;--------------

3 S.D.R
4 ~~J.C.D.R~~.
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/decision: 25.8.2009

Customs Appeal No.511 of 2008

Arising out of the order in appeal No.CC(A)/CUS/EXP/D.1/145/08 1698 dated 25.3.08 passed by the Commissioner (Appeals), Customs, New Delhi.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of 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

C.C., New Delhi .... Appellant

Vs.

M/s Dynamic Laboratories Pvt. Ltd. .... Respondent

Appearance:

Shri S. Gautam, Authorized Departmental Representative (SDR) for the Revenue and none for the respondents

Coram: Hon'ble Shri M. Veeraiyan, Member (Technical)

Oral Order No. 1111/2009 SM (BR)

Per M. Veeraiyan :

This is an appeal by the Department against the order of the Commissioner (Appeals) No. CC(A)/CUS/EXP/D.1/145/08 1698 dated 25.3.08.

2. The respondent imported duty free goods under DEEC Scheme in terms of Advance Licence issued on 25.1.2002 and they were required to fulfil the export obligation by 23.7.03. The respondents in terms of DEEC scheme executed a bond with the bank guarantee undertaking to fulfil the

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export obligation. The Export Obligation Discharge Certificate (EODC) was issued on 1.9.03 by the DGFT and the same was submitted on 5.9.03 to the Customs authorities. In spite of this, the Department pursued with the bank and encashed the bank guarantee vide cash order No.505037/1177/2004 dated 6.8.04. The party filed refund claim on 22.2.06 which was rejected as time barred by the original authority. The Commissioner (Appeals) allowed the appeal of the party with the following finding:

> " ***In this letter the appellant also requested the department to extend BG in case DEEC book had not been received from DGFT and also simultaneously in the same letter made a request to the department to write to DGFT for getting back its (appellant's) D.E.E.C. It is also observed that the appellant was required to fulfil export by 23.7.03 in terms of Advance Licence issued on 25.1.2002. It is also on record that the Jt. DGFT issued E.O.D.C. dated 1.9.03 and the same letter was submitted with the department on 5.9.03 as mentioned herein above. Thus it is seen that export obligation fulfilment certificate was issued late by the Jt. DGFT and the documents required to be submitted with the Customs were submitted on 5.9.03 which is a date prior to encashment of the bank guarantee. Thus it is evidently clear that in presence of all the documents and the E.O.D.C certificate which was issued late by the DGFT, the bank guarantee should not have been encashed. It will not be out of place to stress here that monitoring of export fulfilment obligation falls within the domain of the DGFT and who itself when issued the certificate (E.O.D.C.) after expiry of 18 months time i.e. on 1.9.03 instead of 23.7.03, the appellant cannot be faulted for not submitting the documents in time with the Customs. In view of the above situation, I set aside the order in original and allow the appellant's appeal with consequential relief."***

3. Learned SDR after taking me through the grounds of appeal, seeks setting aside the order of the Commissioner (Appeals) and restoration of the order of the original authority.

4. I have carefully considered the submissions of the learned SDR and perused the records. The respondents operated under DEEC scheme and had executed the necessary bond for fulfilment of export obligation. The responsibility of monitoring the export obligation has been given to the DGFT authorities in terms of the Exim Policy. It is not in dispute that the

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respondents fulfilled the export obligation and produced the E.O.D.C. issued by the DGFT authorities to the Customs authorities. The recovery has been made not in terms of Section 28 of the Customs Act by issue of speaking order but in terms of the bond executed alleging failure to fulfil the export obligation which was factually incorrect. The encashment of the bank guarantee is clearly unwarranted and unauthorised in the facts of the case.

5. When the recovery has been made in terms of the bond without applying the provisions of Section 28, the question of applying the provisions of Section 27 of the Customs Act, for refund of wrongly encashed bank guarantee does not arise. As the bank guarantee was wrongly encashed even after the export obligation has been fulfilled it is proper that the same money is returned to the party.

6. In view of the above, I hold that the decision of the Commissioner (Appeals) in granting the refund is legal and proper ;and that no valid ground has been adduced to interfere with the order of the Commissioner (Appeals).

7. Appeal by the Department is rejected.

M Veeraiyan

(M. Veeraiyan)
Member (Technical)

scd/