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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/978 /2005-981 /2005 - CU[DB] Date 15/04/2009

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

To :
M/S ALLIED GLASSES PVT LTD
BAGHPAT ROAD, MEERUT (U.P)

M/S ALLIED GLASSES PVT LTD Appellant
Vs
THE COMMISSIONER OF CUSTOMS, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/121-124/09 2009 CU[DB]** dated 02.03.09

passed by 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 :
1. Respondent
   THE COMMISSIONER OF CUSTOMS,
   ICD, TUGHLAKABAD, NEW DELHI
2. Adv. / Consult
   MR.V K AGGARWAL
   B-82, LAJPAT NAGAR, PART-2, NEW DELHI-110024
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), Thyagarayа 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-15
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

18. G.K.BANSAL,
19. M K JAIN
20. GAUTAM BANSAL
21. M/S ALLIED GLASSES PVT LTD.,

BAGHPAT ROAD, MEERUT (U.P)

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

Customs Appeals Nos.978-981 of 2005-Customs Branch

[Arising out of common Order-in-Original No..91 of 2005 dated 27.10.2005 passed by the Commissioner of Customs, New Delhi]

Date of Hearing/ Decision:02.03.2009

For approval and signature:
Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see 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

(1) M/s. Allied Glass Pvt. Ltd.
(2) Gautam Bansal
(3) M.K. Jain
(4) G.K, Bansal

...Appellants
[Rep. by Shri V.K. Agarwal, Advocate]

Vs.

CC, New Delhi

...Respondent
[Rep. by Shri A.K. Madan, SDR]

CORAM: **Hon'ble Mr. M. Veeraiyan, Member (Technical)**
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. C/121 to 124/09 /Dated:02.03.2009

Per M. Veeraiyan:

These appeals arise out of the same Order-in-Original No.91/2005 dated 27.10.2005.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:-

a) The main appellant, M/s. Allied Glasses Pvt. Ltd. imported 9 consignments and filed Bills of Entry declaring the items as Glazing Glass and claiming classification under Chapter Heading 7005 and produced DFRC licence to clear the same.

b) 8 of the consignments have been cleared after examination of the consignments and granting exemption under the DFRC licence without any dispute. The 9th consignment covered by Bill of Entry No.110490 dated 10.11.2003 was seized for mis-declaration and allowed clearance after execution of bond with bank guarantee.

4. The Original Authority in pursuance of show cause notice dated 11.11.2004 held that the goods imported by them were all Glazed Glass and not Glazing Glass; that they fall under the category of Float Glass and classifiable under Chapter Heading 7005; they were not useable in the exported products namely leather goods, for the purpose of glazing the leather; the condition of Notification No.46 of 2002-Cus dated

22.04.2002 has not been satisfied as they were not covered by the DFRC licences produced. Accordingly, he confirmed the demand of duty of Rs.19,26,629/-; imposed fine of Rs.6,00,000/- in lieu of confiscation. He also imposed penalty of Rs.5,00,000/- on the appellant-company. In addition he imposed penalty of Rs.1,00,000/- each on the Managing Director and Director of the appellant-company and Rs.75,000/- on Commercial Manager of the appellant-company who are the other appellants.

5.1. Ld. Advocate for the appellants submits that what has been imported by them is patent Glazed Glass; it has been imported from the manufacturer; they are used in the doors and windows for the purpose of glazing and they are covered by the term "Glazing Glass" mentioned in the DFRC licence. He also submits that all the required information has been correctly furnished by them before the Customs Authorities; and that the Examining Officers have clearly recorded that the imported glass items are Glazed Glass and the same are covered by DFRC licence produced by them. Under these circumstances, invocation of extended time limit for demanding duty does not arise. He relies on the decision of the Tribunal vide Final Order No.C/575-577 of 2008 in the case of M/s. Lakshmi Float Glass Ltd. and Others in Customs Appeals No.920-922 of Customs Branch of 2005.

5.2. He also submits that the licence being transferable, no nexus is required to be looked into except in respect of sensitive items covered by para 4.31 of Hand Book of Procedure Vol.I and as stipulated in proviso to Condition No.II of Notification No.46 of 2002-Customs dated 22.04.2002. Ld. Advocate also relies on the Circular No.24 of 2002-Customs dated 6.5.2002 and Circular No.46 of 2007-Customs dated 20.12.2007, which clarify that a co-relation between inputs imported and the inputs used in the export products is not required to be established except in respect of sensitive items, specified in Para 4.31 of Hand Book of Procedure.

6.1 Ld. SDR took us through the Policy Provisions governing Duty Free Replenishment Certificate Scheme especially para 4.2 which permits import under DFRC only "inputs used in the manufacture of goods". He also draws our attention to the definition of the 'materials' under the Notification No.48/2002 dated 25.04.2000 and latter Notification No.46 of 2002 dated 22.04.2002, according to which, "materials" means raw materials, components, intermediate, consumables, computer-software and parts used in the manufacture of the resultant products.

6.2 The imported product is a float glass and the same is in the sheet form and the same cannot be used in the Leather Industry for the purpose of glazing in the glazing machine. The glass can be used for the purpose of glazing and are of special make and of special shape and some of the DFRC licences have clearly indicated that they fall under Heading No.7020. What has been imported by them does not correspond to the DFRC licence. In letter as well as in spirit, the Notification is not applicable. He relies on the decision of the Hon'ble High Court of Delhi in the case of Exports Apparel Group Ltd. Vs. Union of India reported in 1997 (91) ELT 307 (Delhi), wherein it has been held that it is for the Customs Authorities to examine if the goods have bee imported in terms of the licence, and what duty of customs, if any, is leviable thereon.

7.1. We have carefully considered the submissions from both sides. In respect of 8 consignments, which have been cleared without dispute, we observe that the appellant-company has declared the product as Glazed Glass supported by invoices of the manufacturer containing the same description. They have produced the DFRC licence for availing the Notification No.42 of 2002. It appears that the Customs Officers have examined the goods as well as the DFRC licence produced and raised no objection to the said clearance. Therefore, even if, on merits, the matter is to be held against them, we do not find any mis-declaration on the part of the appellant-company. Therefore, as held in the case of M/s. Lakshmi Float Glass Ltd. & Ors., the demand in respect of these consignments is clearly time barred.

7.2. We reproduce the relevant portion of the order in the case of M/s. Lakshmi Float Glass Ltd. & Ors., as follows:-

> "3. On perusal of the impugned order, it is seen that the goods were assessed as per parameter of DFRC licence, which were examined by the Customs Officers and it was tallied with the description as the details given in the DFRC licence. So, the goods have been found to be as per DFRC licence and, therefore, charge of misdeclaration of the goods is not sustainable. The Commissioner merely observed that the appellants had mis-declared the description of the goods "float glass". On perusal of the Bill of Entry and other documents, we do not find any merit in the findings of the Commissioner (Appeals). So, we find that the demand of duty is barred by limitation. Therefore, the demand of duty and penalties are not sustainable. Accordingly, the impugned orders are set aside on limitation without going into the merit. All the appeals are allowed with consequential relief."

7.3. Therefore, the demand relating to 8 consignments are to be set aside as time barred. In the facts and circumstances of the case, we consider the issue as one involving interpretation of provisions of policy and the penalties on the appellants are not warranted.

8. As regards the consignment covered by the Bill of Entry No.110490 dated 10.11.2003, which was subject matter of seizure and

confiscation, we observe that all the issues have to be considered afresh by the Commissioner on merits as well as on limitation after taking in to account the above submissions made by both sides. To enable the same, we remit the matter to the Commissioner for issue of fresh order after granting reasonable opportunity of hearing. We offer no comments on merits of the case in respect of this consignment.

9. All the appeals are disposed of by setting aside the penalties imposed on all the appellants and setting aside the demand relating to 8 consignments and remitting the issues relating to the seized consignment for fresh consideration in the above terms.

Order dictated & pronounced in open court on 2.03.2009.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.