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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/925 /2005 - CU[DB]

Date 23/09/2009

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

To :
M/S FLEX INDUSTRIES LIMITED
A-1, SECTOR 59, NOIDA, UP
M/S FLEX INDUSTRIES LIMITED

Appellant
Vs

C.C NEW DELHI

Respondent

I am directed to transmit herewith a certified copy of Final order No. C/402/ 2009 CU[DB] dated 17.09.09 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
C.C NEW DELHI, ICD,
TUGHLAKABAD, NEW DELHI
2. Adv. / Consult
MR.V.LAKSHMI KUMARAN, ADV., B-6/10.
SAFDARJUNG ENCLAVE, NEW DELHI-110029
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
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Customs Appeal No.C/925/2005

[Arising out of Order-in-Original No.67/2005 dated 11.08.2005 of the Commissioner of Customs, New Delhi].

Date of Hearing:17.09.2009
Date of decision: 17.09.2009

M/s.Flex Industries Ltd. ...Appellant

Vs.

CC, New Delhi ... Respondent

Present for the Appellant :Shri.B.L.Narasimhan, Advocate
Present for the Respondent :Shri.S.K.Panda, CDR

Coram:Hon'ble Dr.Chittaranjan Satapathy, Technical Member
Hon'ble Mr.D.N.Panda, Judicial Member

Final **ORDER NO.** C/402/09. **DATED:17.09.2009**

PER: Dr.Chittaranjan Satapathy

Heard both sides. The Department's case is primarily that against the impugned machinery imported under the EPCG Scheme the appellant's had not fulfilled the export obligation.

2. Shri Panda, Jt. CDR also submits that the appellants have not filed the shipping bills evidencing exports relating to the impugned EPCG licence.

3. Shri Narasimhan, ld. Advocate appearing for the appellant states that the relevant shipping bills showing exports under the relevant EPCG licence were submitted to the Assistant Commissioner and Additional Commissioner of Customs and subsequently the copies of the same were also submitted to the adjudicating Commissioner. Further he states that the certificate of fulfilment of export obligation dated 03.03.06 obtained from the DGFT authorities was not submitted to the Adjudication Commissioner, since adjudication was completed before that date. He further states that the machinery in question which was imported under the Scheme was destroyed in a fire accident which took place in June 2000 and an intimation to the defect was also given to the Jurisdictional Excise Authorities and the same has been acknowledged by the Jurisdictional Superintendent by his letter dated 13th August, 2000.

4. After hearing both sides, we find that the Adjudicating Commissioner has not taken into account the shipping bills submitted by the appellants. He also did not have the benefit of considering the certificate of fulfilment of export obligation by the DGFT authorities. He has also not taken into account the fact of fire accident and the subsequent settlement of the insurance claim.

5. In view of the above, we set aside the impugned order and remand the matter to the Adjudicating Commissioner for verifying the

details of the shipping bills, the certificate of fulfilment of export obligation as well as the details given in respect of the fire accident. He shall provide adequate opportunity of hearing to the appellant before passing a fresh order. Ld. JCDR fairly states that it will be possible for completing the fresh adjudication proceedings within 3 months from the date of receipt of this order. Shri B.L.Narasimhan, ld. Advocate undertakes to give his full cooperation.

6. In the result, the appeal is allowed by way of remand.

[Dictated & pronounced in the open Court].

(DR.CHITTARANJAN SATAPATHY)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

Anita