TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/195 /2007 - CU[DB] Date 15/12/2009

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

To :
COGNIANT INFORMATICS (I) PVT. LTD.
210, SECTOR-37, NOIDA-201303

COGNIANT INFORMATICS (I) PVT. LTD. Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/427/ 2009 CU[DB] dated 09.12.09 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.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult MR. M.S. SODHI, CO.REP.
   C/O COGNIANT INFORMATICS (I) PVT. LTD.
   210, SECTOR-37, NOIDA-201303
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)
16. Office Copy
17. Guard file

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.195 of 2005

(Arsing out of Order-in-Appeal No.155/CE/APPL/NOIDA/06 dated 22.12.2006 passed by the Commissioner of Customs & Central Excise (Appeals), Noida)

Date of Hearing: 07.12.2009
Date of Decision: 07.12.2009

For approval and signature:
Hon'ble Mr.M.Veeraiyan, Technical Member
Hon'ble Mr. D.N.Panda, Judicial Member

1	Whether Press Reporters 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 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

M/s.Cogniant Informatics (I) Pvt.Ltd. Appellant

Vs.

CCE & C, Noida Respondent

Present for the Appellant: Shri M.S.Sodhi, Co. Representative
Present for the Respondent: Shri Mahesh Rastogi, JDR

Coram: Hon'ble Mr.M.Veeraiyan, Technical Member
Hon'ble Mr. D.N.Panda, Judicial Member

Final **ORDER NO.** C/427/09

PER: M.VEERAIYAN

This is an appeal against the order of the Commissioner (Appeals) dated 22.12.2006.

2. Heard both sides.

3. The appellants, who were registered as a STPI unit imported computers and other accessories without payment of duty in terms of Notification No.52/2003-Cus dated 31.3.2003. After availing the exemption, they used imported goods for some period and thereafter

they opted out of STPI scheme. As result of de-bonding, they were required to pay duty on the capital goods which were in their use. The dispute relates to the rate of depreciation that has to be allowed for the purpose of paying duty at the time of de-bonding. The case of the appellant is that they are entitled to claim depreciation at the rate of 10% for every quarter in the first year, 8% for every quarter of the second year and 7% for every quarter in the third year in terms of appendix 14.1 of the handbook procedure applicable to STPI unit. On the other hand, the original authority has held that the depreciation has to be only at the rate of 20% per annum as prescribed under Notification No.52/2003-Cus dated 31.3.2003. As a result, the appellant had been directed to pay a sum of Rs.2,57,652/- as against the claim of the appellant that only a sum of Rs.39,704/- was payable by them.

5. On perusal of the relevant portion of the handbook of procedure, we find that the purpose for which the depreciation has been mentioned in the said procedure has been indicated. It is not clear whether it is related to depreciation under the Income-tax Act or for any other purposes. On the other hand, Notification No.52/2003-Cus dated 31.3.2003 under which the appellants have imported the goods duty free specifically provides for depreciation of 20% per annum at the time of de-bonding. It is not disputed that the appellants imported the goods initially availing the benefit of Notification No.52/2003-Cus dated 31.3.2003. Having availed the benefit of exemption, while opting out of the scheme of STPI, the duty liability has be to be determined in terms of specific provisions relating to depreciation prescribed under the said notification. The appellants are not able to show that there is any provision nullifying the condition in the notification or having overriding effect. Under these circumstances, the order of the Commissioner (Appeals) upholding the order of the original authority appears legal and

proper. No valid grounds have been adduced to interfere with the order of the Commissioner (Appeals).

6. The appeal is, therefore, rejected.

(M.VEERAIYAN)
TECHNIAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

mk