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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/42 /2011 – SM[BR]** **Date 12/10/2011**

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

To :
C.C.E. NOIDA

C-56/42, SECTOR-62, NOIDA-201307

**C.C.E. NOIDA** Appellant

Vs

**M/S SAROLA INTERNATIONAL LTD.,** Respondent

I am directed to transmit herewith a certified copy of **Final order No. 681 / 2011-SM[BR]** dated 27.9.2011

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 SAROLA INTERNATIONAL LTD.,**
**D-13/4, OKHLA INDUSTRIAL**
**AREA, PHASE-II, NEW DELHI.**

2. Adv. / Consult SHRI J.M. SHARMA CONSTT.
252, BASANT ENCLAVE NEW DELHI-57.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI**
**PRINCIPAL BENCH, COURT NO. III**

**Customs Appeal No. 42 of 2011-SM**

[Arising out of Order-in-Appeal No. 316/Cus/Appl/NOIDA/2010 dated 20.10.2010 passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA]

**For approval and signature:**

Hon'ble Ms. Archana Wadhwa, Member (Judicial)

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|---|---|---|
| 1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the 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? | : | No |
| 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 |

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Commissioner of Central Excise NOIDA — Appellants

Vs.

M/s. Salora International Ltd. — Respondent

**Appearance:**

Shri R.Jagdev, JDR for the Appellants
Shri J.M. Sharma, Consultant for the Respondent

Date of Hearing/decision : 27.09.2011

Final **ORAL ORDER NO. 681/2011 SM(BR)**

**Per Archana Wadhwa :**

Being aggrieved with the order passed by the Commissioner (Appeals), revenue has filed the present appeal. I have heard Shri R. Jagdev, learned SDR for the Revenue and Shri J. M. Sharma, learned Consultant for the respondents.

2. The brief facts of the case are that appellant had imported goods under the cover of Bill of Entry, as detailed in the impugned ordere and paid the 4% Additional Duty of Customs leviable under sub-section (5) of Section 3 of the Customs Tariff Act, 1975. The Government has exempted the goods falling within the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), from the whole of the additional duty of customs, when imported into India for subsequent sale vide Notification No. 102/2007-Cus dated 14.9.2007. The exemption is subject to the filing of refund by the importer. Accordingly, the appellant had filed a refund claim for Rs.11,93,522/- on 12.10.2008 under the above said notification. The appellant was issued a show cause notice proposing the rejection of the claim of Rs.99,248/-, out of the total claim, covered vide the Bill of entry No. 101960 dated 8.11.2007. Moreover, some of the quantity of the imported goods was found to be not sold by the appellant involving the SAD amount of Rs.72,782/- and the claim in this regard stands withdrawn by the appellant vide their letter dated 5.10.2009. The adjudicating authority thereafter proceeded and rejected the claim in respect of the Bill of Entry No. 101960 dated

8.11.2007 on the ground that the triplicate or any other original copy of the Bill of Entry was not submitted with the claim.

3. The appellants challenged the said order before Commissioner (Appeals) and contested the rejection of the claim stating that the adjudicating authorioty has rejected the refund claim merely on the ground that the original copy of the concerned Bill of Entry was not submitted along with the claim which is against the intent of the legislation. They have further contended that in the absence of the original bill of entry, they had filed the photocopy of the bill of entry along with the original copy of the TR 6 challan No. 1934 dated 14.11.2007 for Rs.7,80,617/- as a document evidencing the payment of said Special duty of Customs and therefore fully complied the conditions laid under the exemption notification 102/2007-Cus dated 14.9.2007. That have also contended that they have also fully complied with the provisions of Para 5 [(5.1) to (5.3)] of the CBEC Circular No. 6/2008 dated 28.4.2008, by filing all the documents required therein.

4. The Commissioner (Appeals) held as under :

> "7.3 It is observed that the only observation by the adjudicating authority, for rejecting the refund claim, is that the appellant were required to submit the Bill of Entry in original i.e. either triplicate copy or any other copy as per the condition laid down under Notification No. 102/2007-Cus dated 14.9.2007 and CBEC Circular 6/2008 dated 28.4.2008. Thus the claim was held to be inadmissible to the appellant due to non-compliance of the conditions stipulated in the said notification and the Circular. It is also observed that the appellant has withdrawn their claim for Rs.72,782/- being the SAD element involved in the quantity of

the imported goods found to be not sold by the appellant. As such, the present appeal is limited to the claim of Rs.26,466/- only. "

5. However, on going through the conditions laid down under the notification No. 102/07 Cus dated 14.9.07, which is as follows:-

> "(e) the importer shall, inter alia, provide copies of the following documents along with the refund claim:
>
> (i) document evidencing payment of the said additional duty;
>
> (ii) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
>
> (iii) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods."

He observed that, "thus, in view of the above, I find that the adjudicating authority has travelled beyond the conditions as stipulated by the Notification and had rather mis-interpreted the same, wherein the para 2(e) itself provides the conditions for submissions of the copies of the documents as specified therein along with the refund claim. I thus find that the filing of the original documents/ enclosures, in original, is not the condition prescribed vide the Notification No. 102/2007-Cus dated 14.9.2007".

6. The revenue's only grievance is that the refund stand sanctioned without producing the original copy of bill of entry. However, the Revenue is not contesting the refund on merits. The appellate authority has discussed in details that there is no requirement of original bill of entry in terms of notification. Even otherwise, it is

not in dispute that the appellants have paid the dues and the technical ground of non production of original copy of bill of entry cannot be made a basis for denial of the benefit of notification. Accordingly, I find no infirmity in the view adopted by Commissioner (Appeals). The revenues' appeal is accordingly rejected.

( Pronounced in the open Court)

( Archana Wadhwa )
Member(Judicial)

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