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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. E/1878/2008 –SM[BR] Date 02/12/2010

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

To :
C.C.E. LUCKNOW
7-A, ASHOK MARG, LUCKNOW.

C.C.E. LUCKNOW Appellant

Vs

M/S FUSION ELECTRONICS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1336 / 2010-SM[BR] dated 18.11.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
M/S FUSION ELECTRONICS PVT. LTD.
F-23-25, INDUSTRIAL AREA, SAROJINI NAGAR, LUCKNOW.
2. Adv. / Consult SHRI V.B.SRIVASTAVA ADV.
PRACTISING AT 116, KASMANDA REGENT
APARTMENTS,-2-PARK ROAD, HAZRATGANJ, LUCKNOW-1.

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 Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10 Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13 TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14 Office Copy
15 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Excise Appeal No.1878 of 2008
(Arising out of Order-in-Appeal No.66-CE/LKO/08 dated 28.5.2008 passed by the CCE (A), Lucknow)

Date of Hearing/Decision: 18.11.2010

For approval and signature:
Hon'ble Mr.M.Veeraiyan Member (Technical)

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

CCE, Lucknow — Appellant

Vs.

M/s. Fusion Electronics (P) Ltd. — Respondent

Present for the Appellant : Shri K.P.Singh, SDR
Present for the Respondent: Shri V.B.Srisvastava, Advocate

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

Final **ORDER No.** 1336 / 2010 SM(BR)

PER: M.VEERAIYAN

This is an appeal filed by the department against the order of the Commissioner(Appeals) by which the order of the original authority demanding duty of Rs.71,375/- after denying the credit on the goods imported through courier agency and imposing penalty of equal amount has been set aside by the Commissioner(Appeals).

2. Heard both sides.

3. The respondents imported a consignment through courier mode. As per the customs procedures, the courier agency has filed bill of entry indicating the name of the different importers, description of the goods and other relevant particulars and the goods were assessed to duty by the customs authorities. Since courier agency filed a combined bill of entry relating to several importers (consignees), the respondents received photocopies of the bill of entry and taken credit of CVD paid on the imported goods. The original authority denied the credit on the ground that the bill of entry was not filed by the respondents –importers and that they did not produce the original bill of entry and demanded duty and imposed penalty as mentioned earlier. On appeal filed by the party, the Commissioner (Appeals) has set aside the order of the original authority.

4. Learned SDR reiterated the grounds of appeal and also finding and reasoning of the original authority.

5. Learned Advocate for the respondents strongly supports the order of the Commissioner (Appeals).

6. I have carefully considered the submissions made from both sides and perused the records. I do not find any dispute that the material on which the credit taken has been taken imported by the respondents and that they have received the material and used for the internal purpose. The objection of the department is that the respondents have not produced the bill of entry in their own name. This clearly overlooks the customs procedure prescribed for the clearance of the goods imported by courier mode. When the goods are imported through courier agency, it is not in dispute that the

courier agency are permitted to file bill of entry on behalf of the importer – consignee and clear the consignment. When the courier agency has been permitted to file common bill of entry on behalf of several importers, obviously all such importers cannot be given original documents. Production of photocopies of bill of entry by the respondents cannot be held against them. The submission in the grounds of appeal that the name of the respondents is not appearing in the bill of entry is factually incorrect. Though the bill of entry is filed by the courier agency, the details of each importer – consignee stand mentioned in the bill of entry. Considering the special category of imports and considering that the Customs have prescribed a different procedure, the grounds on which the credit are sought to be denied cannot be sustained. As rightly pointed out by the learned Advocate for the respondents, the issue is covered by the decision of the Tribunal in the case of Controls & Drives Coimbatore (P) Ltd. vs. CCE, Coimbatore reported in 2008 (222) ELT 470 and the decision of the Tribunal in the case of Macneill Engineering Ltd. vs. CCE, Kolkata-VII reported in 2009 (234) ELT 345.

7. I do not find any valid reason to interfere with the order of the Commissioner (Appeals) and therefore the appeal is rejected.

(Dictated and Pronounced in the open court)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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