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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/680 /2008 – SM[BR] Date 30/07/2010

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

To :
M/S WINGS ELECTRONICS LTD.
A-61, SECTOR-16,
NOIDA-201301.

M/S WINGS ELECTRONICS LTD. Appellant
Vs
C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 843 / 2010 –SM[BR] dated 22.7.2010 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   C.C.E. MEERUT II
   OPP. SAHEED PARK (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult
   MR.V. LAXMIKUMARAN
   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. 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.2, R.K.Puram, New Delhi

COURT-III

SINGLE MEMBER BENCH

Date of hearing/decision: 22.7.2010

Central Excise Appeal No.680 of 2008-SM

Arising out of the order in appeal No.143/CE/APPL/NOIDA/07 dated 18/27.12.2007 passed by the Commissioner (Appeals), Customs & Central Excise , Meerut.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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 Wings Electronics Ltd. .... Appellants

Vs.

C.C.E., Meerut II .... Respondent

Appearance:

Shri Ravi Raghvan, Advocate for the appellants
Shri I. Baig, Authorised Departmental Representative (SDR) for the Revenue

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No. 843/2010 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 143/CE/APPL/NOIDA/07 dated 18/27.12.2007.

2. Heard both sides.

3. The dispute relates to denial of credit in respect of 2 bills of entry No.00558 and 010956 involving total credit of Rs.2,33,573/-. The credit was

sought to be denied on the ground that the appellants have not produced the said bills of entry for defacement by the jurisdictional Central Excise Superintendent. Commissioner (Appeals) has upheld the order of the original authority.

4. Learned Advocate for the appellants submits that several documents including bills of entry for 1995-96 and 1996-97 were summoned to be produced by DRI officers on 17.12.96. Accordingly, the 3 files containing bills of entry with serial numbers 1 to 72 were produced to the officials of the DRI ON 17.12.96. Subsequently, when the jurisdictional Central Excise authorities were seeking copies of the bills of the entry for defacement, they exchanged correspondence with the jurisdictional Central Excise authorities and the DRI seeking copies of such documents. The DRI officials gave the copies of the documents periodically. For example, by letter dated 8.11.05, they gave copies of 7 bills of entry. By letter dated 11.8.04 they requested for copies of three bills of entry, but DRI vide letter dated 31.8.04 produced copy of one bill of entry. He submits that the two bills of entry were surrendered to DRI and as the DRI has not given the copies of said documents, they were not able to produce the copies for defacement.

5. Learned SDR submits that the appellants are required, during the relevant time, to produce original duty paying documents and extracts of Part I and II Form RG-23A within 5 days after close of each month. As the disputed amount relates to Nov. 1996, the appellants should have produced the documents before 5.12.96 to the Department. Since they have failed to produce the same and since there is no specific evidence that the disputed bills of entry were taken over by the DRI, the denial of credit should be upheld. He also relies on the decision of the Tribunal in the case of Paramount Communication Limited v. C.C.E., New Delhi reported in 2004 (176) ELT 366.

6. I have carefully considered the submissions from both sides. On perusal of the show cause notice dated 29.4.97, it is noticed that the show cause notice was issued for denying the credit of Rs.21,99,936.90 alleging that the copies of the duty paying documents have not been produced for

defacement in 26 cases. The appellants have tried to get copies from DRI and produced the same as and when received from DRI and the demand has, accordingly, been reduced substantially. In other words, except in respect of credits based on 2 bills of entry, other credits have been allowed and the matter regularised. Viewed in this background, the claim of the appellant that the DRI has collected bills of entry including 2 disputed bills of entry, and that they could not produce the copies to the authorities for defacement due to non-receipt of copies from DRI deserves to be accepted. It is seen from the records that while DRI has seized/recovered certain documents, they released copies of bills of entry on more than one occasion. From the available record, it is seen that they have released such documents on 31.8.04 and 8.11.05. Under these circumstances, the claim of the appellants that the documents were in the custody of the DRI and perhaps ~~as~~ they have misplaced and therefore, they have not been able to get them and produce the same to the authorities for defacement deserves to be accepted.

7. In view of the above, the order of the Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief, as per law.

(M. Veeraiyan)
Technical Member

scd/