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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/237 /2007 - CU[DB] Date 28/04/2011

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

To :
M/S LEE-ZA INTERNATIONAL,
18/19, FRIENDS COLONY, CHANDRA NAGAR,
MORADABAD (U.P.)

M/S LEE-ZA INTERNATIONAL, Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/155/ 2011 CU|DB|** dated 20.04.2011 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. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult
MR.SUDHIR MALHOTRA
13-R, HUKAM CHAND COLONY,
NEAR D.A.V COLLEGE, JALANDHAR

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise, I.P. Estate, New Delhi
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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No.237 of 2007

(Arising out of Order-in-Appeal No.03-Cus/MRT-II/2007 dated 6.3.2007 passed by the CCE (A), Meerut)

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
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?	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?	No

M/s.Lee-za International — Appellant

Vs.

CCE, Meerut-II — Respondent

Present for the Appellant: Shri Sudhir Malhotra, Advocate
Present for the Respondent: Shri K.K.jaiswal, SDR

Coram:Hon'ble Mrs.Archana Wadhawa, Member(Judicial)
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/Decision: 19.04.2011

Final **ORDER NO.** C/155/11

PER: ARCHANA WADHAWA

The appellant is an exporter of handicrafts. They imported PVC tray for packing the handicrafts, claiming exemption under Notification No.21/2002-Cus dated 1.3.2002. Serial No.114 of the said notification grants exemption to "poly film used for shrink wrapping and cling wrapping of artwares."

2. The lower authorities have denied the exemption by observing that PVC tray imported by the appellant cannot be considered to poly film used for shrink wrapping and cling wrapping of artwares.

3. Learned Advocate appearing for the appellant during the course of hearing fairly admitted that PVC trays are not in the shape of Poly films and description against serial No. 114 (i) of the notification had not stand fulfilled by the importer. However, he shifted his claim and claimed the benefit of Notification No.104/94-Cus dated 16.3.1994. The said notification provided exemption to containers of durable nature subject to importer to execute a bond binding himself to re-export the said containers within six months from the date of their importation. Learned Advocate fairly admitted that the claim of benefit of said notification was not advanced either before the adjudicating authority or before the first appellate authority. He submits that this being a legal issue, the appellant may be permitted to raise the same at this stage.

4. Countering the arguments, learned DR appearing for the Revenue opposes the prayer of the learned Advocate that Notification No.104/94-Cus dated 16.3.1994 granted exemption subject to fulfilment of certain procedure like execution of bond, etc. and the appellant having not fulfilled the procedural requirement, the claim of the appellant at this belated stage should not be entertained. He also submits that the notification requires export of very same goods within six months from the date of their importation and it cannot be established at this late stage as to whether the exported goods were the very same goods which were imported by the appellant. Learned

DR submits that in any case, the claim under the said notification No.104/94-Cus having not been placed before the lower authorities, their opinion on the said notification being not available, the matter should be remanded, if the appellants are permitted to raise the above legal issue.

5. In his rejoinder, the learned Advocate submits that fact of export of the very same goods had already been raised before the original adjudicating authority. As such, as the facts are available on record it is only a legal claim of the notification which is now being raised for the first time.

6. After appreciating the submissions, we agree with the learned DR that this claim was not made before the authorities below. However, we feel that the same is the alternative claim of exemption for another notification, which was available at the time of import of the goods. We further note that there are procedural requirements for execution of bond at the time of import of the goods. However, we feel that such requirement of execution of bond is primarily to ensure the re-export of the goods within six months from the date of importation or within the period further extended by the jurisdictional Assistant commissioner. If the appellant is in a position to establish export of said goods within six months from the date of importation from other collateral evidence, we are of the view that the benefit of notification should be made available to the assessee. However, as observed earlier the claim of the appellant does not stand examined by the lower authorities. However, the facts of export of the very same goods, which were imported by the appellant have to be established

and identity of the imported and re-exported goods is required to be examined by the lower authorities, we set aside the impugned order and remand the matter to the adjudicating authority for examining the appellant's claim of exemption of Notification No.104/94-Cus dt.16.3.1994. We make it clear that the original claim of the appellant under Notification No.21/2002-Cus dated 1.3.2002 stands rejected by us.

7. Appeal is disposed of in above terms.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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