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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/438 /2007 - CU[DB] Date **08/06/2011**

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

To :
M/S EURUS NETWORK SERVICES PVT. LTD.

B-6/1, FIRST FLOOR, SAFDARJANG ENCLAVE

M/S EURUS NETWORK SERVICES PVT. LTD. Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/246/ 2011 CU|DB|** dated 02.06.11

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. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult : Sh. Manoj Singh, Adv
C/O Appellant

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. Taxmann Allied Service Pvt Ltd., 59/32. New Rohtak Road. New Delhi - 110005
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
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
COURT NO.III

Appeal No.C/438/07

Arising out of OIA No.CC(A)/52/I & G/2007 dated 16.04.07

Passed by: Commissioner of Customs (Appeals), New Delhi

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	Yes

Appellant/s	...	M/s. Eurus Network Services Pvt. Ltd.
Represented by	...	Shri Manoj Singh, Advocate
		Vs.
Respondent/s	...	CC New Delhi
Represented by	...	Shri S.R. Meena, SDR

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. MATHEW JOHN, MEMBER (TECHNICAL)

Date of Hearing:01.06.11
Date of Decision:01.06.11

Per: Mrs. Archana Wadhwa: Final order No C/246/11

As per facts on record the appellant is a licensed international call centre having its registered office at A-28, Gulmohar Park, New Delhi and Branch Office at B-6/1, 1st Floor, Safdarjang Enclave Commercial Complex, New Delhi. They imported one second hand equipment called (Nuera Gx 8 Chasis) and filed a bill of entry on 23.06.06 declaring the assessable value as Rs.2,00,880/-. On enquiries being made the appellants stated that first check be conducted as the goods were used and refurbished.

2. In as much as the address of the appellant in the airway bill was given as B-6/1, 1st Floor, Safdarjang Enclave Commercial Complex, New Delhi and the bill of entry was filed for the address A-28, Gulmohar Park, New Delhi, the officers entertained a view that the certificate of import/export code, which was in the name of the appellant showing their registered office address, was not for the goods in question. Accordingly proceedings were initiated culminating into an order passed by the original adjudicating authority laying down that as the imported goods were second hand goods and hence it required a specific license and also on the ground that the address given in the bill was different from the address given in the IEC. The adjudicating authority confiscated the goods with an option to the appellant to redeem the same on payment of redemption fine of Rs.60,000/-. Further penalty of Rs.20,000/- was also imposed.

3. Being aggrieved with the order, appellant filed appeal before Commissioner (Appeals) contending that the imported goods were old capital goods and as such required no special license; that the appellants

have a valid IEC certificate issued at their registered office and as such it cannot be said that they do not have any IEC certificate. They accordingly requested for setting aside the impugned order.

4. The Commissioner (Appeals) did not find favour with the above contention of the appellant. He observed that the appellants have not placed any evidence on record to show that the impugned goods are capital goods and merit free import without any specific license in terms of the policy Circular No.4(RE-2006)/2004-09 dated 20.04.06 issued by Government of India, Ministry of Commerce and Industry, Directorate General of foreign Trade laying that no restriction is applicable on import of second hand capital goods. We note that it is the Revenue who is making the allegation of non production of specific license and as such on the face ~~phase~~ of the fact that the goods in question were admittedly old and used, it was for the Revenue to show that the same required a ~~is~~ specific license for import. Admittedly the policy circular issued by DGFT is to the effect that no restriction is applicable on import of second hand capital goods which are freely importable without a specific license.

5. The second objection raised by the Revenue is to the effect that whereas the airway bill shows the address of Safdarjang Enclave, the bill of entry address of the appellant is that of Gulmohar Park. As such they have concluded that IEC certificate issued to the appellant does not belong to them in as much as the same was showing the address of Safdarjang Enclave. The said objection raised by the Revenue stands dealt with by the appellant by submitting that their registered office was Gulmohar Park and their branch office was Safdarjang Enclave. That is the reason for the two different addresses being reflected in the airway

bill and the bill of entry. Admittedly the Revenue has treated the appellants as the importer of the goods, when the goods stand released to them. As such the above technical objection should not result in confiscation of the goods or in imposition of penalties upon them. We accordingly set aside the confiscation with redemption fine of Rs.60,000/- and penalty of Rs.20,000/- imposed upon the appellant and allow their appeal with consequential relief.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**