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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/588 /2007-591 /2007 - CU[DB] Date **12/08/2011**

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

To :
M/S ROCKWIN FLOWMETER INDIA PVT. LTD.
B-24, SITE - IV, SAHIBABAD INDUSTRIAL AREA,
GHAZIABAD, UP

M/S ROCKWIN FLOWMETER INDIA 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/352-355/ 2011 CU[DB]** dated 04.08.2011 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. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult
MR.MOHAN LAL
B-67, FLATTED FACTORIES COMPLEX,
OKHLA PHASE-III,NEW DELHI

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 (Harvana)
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)

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

Customs Appeal No. 588 to 591 of 2007

[Arising out of Order-in-Appeal No. CC(A)/Cus/107 to 110/Im /2007 dated 21.6.2007 passed by the Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

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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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M/s. Rockwin Flowmeter India Pvt. Ltd. — Appellants

Vs.

Commissioner of Customs
New Delhi — Respondent

Appearance:
Shri Mohan Lal, Advocate for the Appellants
Shri Sonal Bajaj, SDR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 03.08.2011

Final **ORAL ORDER NO. C/352-355/11**

Per Archna Wadhwa (for the Bench):

All the four appeals are being disposed of by a common order as the issue involved is identical. A very short dispute of classification of goods imported by the appellants is involved.

2. As per facts on record, the appellants have imported 'Omni Flow computers' by classifying the same under heading 9026 1090 under a concessional rate of duty in terms of notification No. 24/05-Cus, Sr. No.4. As per the appellants the said goods were being imported by them for last number of years without any objection raised by the revenue. However, in respect of Bills of entry filed on 14.2.06 and thereafter, revenue raised an objection about the classification of the said product and held a view that the same are properly classifiable under Customs Tariff Heading 9032 8990 and chargeable to basic customs duty at the rate of 15% in terms of Notification No. 13/05-Cus. The bills of entry filed by the appellants were accordingly assessed.

3. It is seen that after the assessment, appellants made a request to the assessing authority to pass a speaking order so as to enable them to know the basis for adopting the different classification from the previous

one, inspite of such a request, no ~~appealable~~ speaking orders were passed by the proper officer thus compelling the appellants to file an appeal against the assessed Bills of entry. The appeals filed by the appellants stand rejected by the Commissioner (Appeals). Hence, the present appeals.

4. The appellant's grievance is that inspite of having made a proper request for passing a speaking, reasoned and appealable order, no such orders stand passed by him. Even otherwise, the submissions made by them before the Commissioner (Appeals) along with technical literature etc. do not stand considered by the appellate authority, who has simply held the goods classifiable under heading 9032 by referring to Chapter note 7 to Chapter 90 of the Tariff. The grievance of learned advocate appearing before us is that appellate authority has nowhere discussed as to how the goods imported by the appellants get covered by the said Chapter Note. The appellate authority has also not averted to various submissions made by them though the same stand reproduced in the impugned order. As such, the request to set aside the impugned order and remand the matter to original authority is being made.

5. Learned DR appearing for the revenue agrees that speaking order should have been passed by the original adjudicating authority as requested for by the appellants but submits that the appellants were given a proper opportunity to put forth their defence by Commissioner (Appeals) and as such, lapse on the part of the original authority stands rectified by Commissioner (Appeals).

6. After considering the submissions made by both sides and after having gone through the impugned order, we note that though Commissioner (Appeals) has reproduced the submissions made by the appellants but has disposed of the appeal after reproducing Chapter Note 7 with Chapter 19 by observing as under:

> " The impugned goods imported by the Appellant are squarely covered by this explanation. Therefore, according to the said Chapter Note the impugned goods are classifiable under CTH 9032 as done by the department and not under CTH 9026 as claimed by the Appellant and the appeal filed by the Appellant is liable to be rejected. "

7. As is clear from the above, there is no discussion as to how the goods imported by the appellants fit into the said Chapter Note. We also note that other pleas advanced by the appellants have not been discussed and considered by the appellate authority. As such, we agree with the learned advocate that the impugned order passed by the Commissioner (Appeals) is to ~~shall~~ be set aside. We, however note that the proper officer after assessing the Bills of entry have not passed any speaking order as requested by the appellants which he was duty bound to pass in terms of Section 17 of the Customs Act and the instructions issued by the Board.

8. By taking all the above facts into consideration, we set aside the impugned order and remand the matter to the original authority for

taking up the matters as afresh and deciding the same after giving an opportunity to the appellants to put forth their case.

9. All the appeals are allowed by way of remand.

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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