14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/955 /2005 - CU[DB] Date **07/09/2011**

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

To :
M/S NEW WAVE INDUSTRIES
HOSHIARPUR ROAD, JALANDHAR, PUNJAB

M/S NEW WAVE INDUSTRIES Appellant

Vs

THE COMMISSIONER OF CUSTOMS, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/394/ 2011 CU[DB]** dated 02.09.2011 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
THE COMMISSIONER OF CUSTOMS,
ICD, TUGHLAKABAD,
NEW DELHI

2. Adv. / Consult
MR. V.L. KUMARAN,
B-6/10, SAFDERJUNG ENCLAVE,
NEW DELHI – 110 029.

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,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.955 of 2005-Cus

(Arising out of Order-in-Original No.80/2005 dated 15.09.05 passed by the Commissioner of Customs, New Delhi)

Date of Hearing/Decision: 30.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, 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

M/s.New Wave Industries — Appellant

Vs.

CC, New Delhi — Respondent

Present for the Appellant: Shri U.Banerjee, Advocate
Present for the Respondent: Shri Amrish Jain, SDR

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

Final **ORDER NO.** Cl 394/11

PER: ARCHANA WADHWA

The present appeal is being reheard in terms of the order passed by Hon'ble High Court of Delhi vide which the earlier order of the Tribunal rejecting the assessee's appeal stands set aside and the remanded for reconsideration.

2. After hearing both sides, we find that the dispute lies in a narrow compass, as the only allegation made by the Revenue, which was earlier accepted by the Tribunal, that shipping bills filed by the appellants showing export of final products were bogus and were not accepted as the correct reflection of facts. The appellants challenged the order of the Tribunal before Hon'ble High Court on the ground that the DGFT authorities had dropped the show cause notice issued on identical ground for non compliance of export obligation and has issued DODC (Export Obligation Discharge Certificate) and this fact though recorded in the order, has not taken note of by the Tribunal. Hon'ble High Court has appreciated the above plea of the appellants and observed as under:-

"We find from the order of the CESTAT that it has specifically taken note of this submission raised by the appellant in the impugned order but does not deal with or consider the same. We are conscious of the fact that insofar as the issue regarding purported mistake in the export document concerned that is of purely factual findings of facts arrived at by the CESTAT in a particular manner. It is not for us to tinker with those facts in this appeal where we are concerned with the question of law. However, at the time same, we are of the opinion that the effect of the aforesaid communication dated 1st July, 2009 issued by Jt.DGFT should have been considered and CESTAT was supposed to take a view on that one way or the other. No doubt, the language of the said letter, as extracted above, shows that redemption letter is issued on the basis of documents supplied by the appellant. We do not know what were the documents which were supplied by the appellant. CESTAT could have enquired into that and on that basis could have come to the conclusion as to whether the aforesaid certificate was issued by the office of the Joint DGFT on the basis of proper documents submitted by the appellant. However, since that aspect is not considered at all by the CESTAT,

we set aside the impugned order passed by the CESTAT on this ground and remit the case back to the CESTAT to discuss the aforesaid documents and arrived at a finding on that basis."

3. As is seen from the above observation of Hon'ble High Court, the documents on the basis of which DGFT has issued redemption letter is required to be verified and enquiry to that effect is required to be undertaken. It is seen that the said enquiry form the DGFT can be made only at the departmental level. As such, while following the Hon'ble High Court's direction, we set aside the impugned order and remand the matter to the Commissioner for undertaking enquiry form the office of DGFT as regards the documents, on the basis of which the said redemption letter issued by them. We make it clear that the said remand is being directed to carry out the direction of the Hon'ble High Court of Delhi and we are not expressing any opinion on the matter. Based on the result of the said enquiry, the adjudicating authority would be free to decide the appeal on merits.

4. The appeal is thus allowed by way of remand.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(RAKESH KUMAR)
MEMBER (TECHNICAL)

mk