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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/697 /2007 – CU DB　　　　Date **19/10/2011**

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

To :
M/S PAN INDIA ELECTROMECH PVT. LTD.
105,PHASE-IV, UDYOG VIHAR, GURGAON-15

M/S PAN INDIA ELECTROMECH 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/451/ 2011** CU DB dated 18.10.2011 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.S.S.ARORA
B1/71, SAFDARJUNG ENCLAVE,
NEW DELHI-29

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 Branch)

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

Customs Appeal No. 697 of 2007

[Arising out of Order-in-Appeal No. CC(A)Cus/I&G/159/D1/2007 dated 10.09.2007 passed by the Commissioner of Customs, New Delhi]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, 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. Pan India Electromech Pvt.Ltd. Appellants

Vs.

Commissioner of Customs
New Delhi Respondent

Appearance:

None for the Appellants
Shri Naresh Pathak, DR for the Respondent

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

Date of Hearing/decision : 5.10.2011

Final **ORAL ORDER NO.** C/451/11

Per Archana Wadhwa (for the Bench):

On matter being called, neither anybody appeared nor is there any adjournment request. We have accordingly, heard learned SDR and have gone through the impugned order.

2. As per facts on records, it is seen that the appellants imported Caris Marine GIS-CDs and documentation for Indian Navy and filed a Bill of Entry No. 268675 dated 7.3.06. In the said Bill of Entry, the appellants have never declared that goods are meant for Indian Navy so as to attract the concessional rate of duty under Notification No. 39/06. Infact benefit of said notification was never claimed in the Bill of Entry, which stands appealed before us. Accordingly, on the basis of declaration made by the appellant, duty of Rs. 48,678/- was assessed and the appellants paid the same and got the goods cleared.

3. Subsequently, they filed a refund claim of Rs.48,678/- on 18.5.06 on the ground that the said goods were meant for Indian Navy and so they were entitled to concessional rate of duty in terms of notification. They also produced on demand, the duty exemption certificate from National Hydrographic office. The said refund claim stand denied by lower authorities. Hence the present appeal.

4. The appellants have contended that production of requisite certificate subsequent to the clearance is only a procedural lapse and should be condoned. We find it is the revenues contention that the

benefit of notification was never claimed by the appellants and further the assessed Bill of Entry was never put to challenge by way of filing an appeal and hence the rejection of the refund was appropriate.

5. Admittedly, the appellant never claimed the benefit of notification in the said Bill of Entry which was assessed by the proper officer in accordance with the declaration made by them. As such subsequent filing of refund claim, without putting the Bill of Entry to challenge, is against the law declared by Hon'ble Supreme Court in the case of Priya Blue Industries reported in [2004 (172) E.L.T. 145 (SC)]. We do not find any merits in the above plea of the appellants.

6. The appeal is accordingly rejected.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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