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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/2275 & 2422/2005 - EX[DB]

Date **29/07/2011**

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

To :
M/S LG ELECTRONICS INDIA PVT.LTD.
PLOT NO.51, UDYOG VIHAR,
SURAJPUR KASNA ROAD GREATER NOIDA U.P. 201306

M/S LG ELECTRONICS INDIA PVT.LTD. Appellant

Vs

C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.663-664/ 2011 EX[DB]** dated 12-7-11 passed by the Tribunal under **Section 35-C(1)of Central Excises Act, 1944**

Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-
201307

2. Adv. / Consult
MR.R.S. SHARMA, ADV.,
C-9/9656, VASANT KUNJ, NEW DELHI 110070

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
14. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/ Decision:12.07.2011

For approval and signature:

Hon'ble Mr. Justice R.M. S. Khandeparkar, President
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the :

   CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

Excise Appeal No.2275 of 2005

(Arising out of Order-in-Appeal No.46-CE/APPL/NOIDA/05 dated 13.04.2005 passed by the Commissioner of Central Excise (Appeals), Noida (U.P.)).

M/s. L.G. Electronics India Private Ltd. **.....Appellant**

Vs.

CCE, Noida **...Respondent**

Excise Appeal No.2422 of 2005

(Arising out of Order-in-Appeal No.46-CE/APPL/NOIDA/05 dated 13.04.2005 passed by the Commissioner of Central Excise (Appeals), Noida (U.P.)).

CCE, Noida **....Appellant**

Vs.

M/s. L.G. Electronics India Private Limited **...Respondent**

Appearance: Shri Alok Arora, Advocate appeared for the party.
Shri S.R. Meena, DR for the department.

CORAM: **Hon'ble Mr. Justice R.M.S. Khandeparkar, President**
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final Order No.663-664/2011-Ex/Dated:12.07.2011

Per Justice Shri R.M.S. Khandeparkar:

Heard ld. Advocate for the party and DR for the department.

2. These appeals arises from the order passed by the authorities below rejecting the benefit of Notification No.108/95-CE dated 28.08.95, as amended from time to time, on the ground that the split air-conditioners which were supplied by the party to the purchasers were not intended to be used for official purposes as they were used in leased residential premises. The cross appeal by the department is in relation to the refusal on the part of the Commissioner (Appeals) to sustain the penalty.

3. The facts in brief relevant for the decision are that in terms of Notification No.108/95-CE dated 28.08.95, exemption was granted to the goods falling under the Schedule to the Central Excise Tariff Act, 1985 when supplied to the United Nations or an International Organisation for their official use or supplied to the projects financed by the United Nations or an International Organisation and approved by the Government of India provided that to avail such benefit the manufacturer was required to produce before the Asstt. Commissioner of Central Excise having jurisdiction over his factory, that the goods were intended for official use by the United Nations

or an International Organisation, a certificate from the United Nations or the International Organisation to that effect was required to be produced. It is not disputed that the appellants produced the certificate along with the copy of the purchase order. The purchase order disclosed that the split air-conditioners were meant for the use in the leased residences. However, at the same time, the certificate issued by the authorised signatory of the World Bank read thus:-

> "This certificate is issued in respect of the Bank's Purchase Order No.1165679 dated May 26, 2003 for supply of Split Air-conditioners from LG Electronics India Ltd. It is certified that these Split Air-conditioners are intended for the official use of the World Bank and the bank is entitled to exemption of excise duty as per attached notification No.108/95 dated 28th August, 1995."

The certificate clearly referred to the Purchase Order No.1165679 dated 26.5.2003. The said Purchase Order clearly discloses that the split air-conditioners would be used for leased residences. Once it is apparent from the certificate that the goods which were ordered for supply under the specific order which was to the knowledge of the signatory of the certificate and the purchase order clearly discloses that the goods were to be used for the leased residences and having knowledge about all these facts, the authorised officer having issued the certificate that those goods were intended for the official use of the World Bank, the requirement of the certificate in terms of the said notification was fully satisfied. Being so, merely because the goods were not used for offices but for residential purposes, it can not make any difference once the authorised officer had certified that such goods even though were meant for use in the leased residences, the same were for official purposes by the World Bank. The appellants were squarely entitled for the benefit under the said notification. Considering the same, the impugned order cannot be sustained and the appellants are to be held as entitled for the benefit of the said notification in relation to the goods in question.

4. Once it is clear that that the appellants were entitled for the benefit of the said notification, question of imposition of penalty does not arise.

5. Hence, for the reasons stated above, the impugned order cannot be sustained and is hereby set aside. The appellants are held to be entitled for the exemption under the said notification in relation to the goods in question. The appeal accordingly is allowed with consequential relief and the cross appeal by the department is dismissed.

[Justice R.M.S. Khandeparkar]
President

[Rakesh Kumar]
Member [Technical]

Ckp.