15

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/620 /2010-621 /2010 - CU[DB] Date **19/01/2012**

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

To :
M/S DIMEX GRANITES PVT. LTD.,
(100% EOU) B-74, MIA, ALWAR (RAJ)

M/S DIMEX GRANITES PVT. LTD., Appellant

Vs

C.C.(JODHPUR) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/22-23 2012 CU[DB]** dated 23.12.11 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.(JODHPUR)
HQ AT NEW CENTRAL REVENUE
BUILDING, STATUE CIRCLE, 'C'
SCHEME, JAIPUR 302005.

2. Adv. / Consult
MR.M.M.GUPTA ADVOCATE (JAIPUR)
A-13, GAYATRI NAGAR, SODALA, JAIPUR-302006 (RAJ.)

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-3
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. M/S DIMEX GRANITES PVT. LTD.,
(100% EOU) B-74, MIA, ALWAR (RAJ)

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 620 -621 of 2010

[Arising out of Order-in-Appeal No. 21-22(DKV)Cus./JPR-I/2010 dated 4.8.2010 passed by the Commissioner of Customs & Central Excise(Appeals), Jaipur (Raj)]

For approval and signature:
Hon'ble Mr. D.N.Panda, 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? :

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? :

M/s. Dimex Granites Pvt. Ltd. — Appellants

Vs.

Commissioner of Central Excise
Jaipur (Raj) — Respondent

Appearance:
Shri M.M. Gupta, Advocate for the Appellants
Shri Rajindra Gupta, DR for the Respondent

CORAM:
Hon'ble Mr. D.N.Panda, Member (Judicial)
Hon'ble Mr.Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 23.12.2011

Final **ORDER NO.** C/A/22-23/12-Cus.

Per D.N.Panda (for the Bench):

1.1 Learned Counsel submits that the goods which were exported on 19.6.2009 were consented for re-import thereof as per information given by the office of Asstt. Development Commissioner, NOIDA.

1.2 Part of the goods meant for export entered into ICD on 28.5.09 in respect of shipping bill No. 2097, 2096 and 2095 of that date. Rest of the goods reached ICD on 2.6.09 in terms of shipping bill No. 2182 and 2183. All the goods covered by shipping bill Nos. 2097, 2096 were cleared by ICD on 29.5.09 for export. The goods covered by shipping bill No. 2095 was cleared on 28.5.09 and rest of the goods covered by shipping bill No. 2183 and 2182 were cleared by ICD on 2.6.09. Thereafter, the consignments moved for export to the place of export port reached on 15.6.09 at the port in terms of receipt no. 21097, 21102 & 21277, 20753 and 20703.

1.3 Customs authorities allowed export on 19.6.09. This is the date on which the goods were intended to leave India as export in terms of definition of "export" under section 2(18) of the Customs Act, 1962 to reach its destination abroad.

1.4 According to Appellant the importer did not accept the goods upon rejection for which those were reimported to India on 11.6.10. There were 8 days left to complete one year period from the date of export goods.

1.5 On the aforesaid scenario, when the appellant moved the authorities to grant benefit of notification No. 52/03-Cus dated 31.3.03 and to release the goods without payment of duty, it was denied such benefit on the plea that one year is to be counted from the date of exportation and the appellant has to pay duty to get back the goods. Thus the goods entered India upon reimport remained in the custody of ICD.

1.6. Learned counsel further submitted that there was no malafide in the entire deal to cause loss to Revenue. The goods came back upon rejection by foreign buyer as it is before completion of one year. No reasons are attributable to the appellant against rejection. Therefore, taking back the goods without payment of duty would be justified in terms of Notification since the appellant has already suffered huge loss.

2. Learned DR on behalf of the Revenue submits that the date when the goods were allowed to leave ICD is the relevant date for the purpose of computation of one

year to grant benefit of the notification. When the goods did not reach India before 27.5.10 and 1.6.10 it cannot be said that the goods were reimported into India within a year. Therefore when the goods reached on 11.6.10, that date is beyond the stipulated period of one year. Accordingly, the authorities below have rightly passed the order rejecting claim of exemption from duty.

3. Heard both sides and perused the records.

4. The date of export can be construed from reading of section 2(18) of Customs Act, 1962. The date on which goods left India and goes beyond its territory then export takes place. Such view is also fortified from the judgements of Hon'ble High Court of Madras in the case of Lucas TVS Padi vs. AC of Customs [1980 ELT 465 (Mad)].

5. In the present case, when the goods were allowed for export, that date should be construed as date of export and that is 19.6.09. it is undisputed fact that goods came back to India on 11.6.10. That is 8 days before expiry of one year from the date of loading of the goods to the ships. In such circumstance, there is no reason to deny the benefit of notification in question to

the appellant since reimport within one year of export is duty free.

6. On appreciation of the scheme of the law and the meaning of export envisaged by law, we do appreciate that law is not to cause impediment but to be interpreted in a manner that it becomes workable. Consequently, the appellant need not be directed to deposit duty for getting the possession of the goods reimported.

7. In the result appeal is allowed.

(Pronounced in the Court)

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

ss