14.

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

REGISTERED / AD
Email : cestat08@gmail.com

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. C/S/2695/2011 IN C/502 /2011 - CU[DB] Date **23/03/2012**

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

To :
M/S NIPPON AUDIOTRONIX LTD

D-8, SECTOR-10, NOIDA.

M/S NIPPON AUDIOTRONIX LTD Appellant

Vs

C.C. (ICD) NEW DELHI **STAY ORDER NO.C/S/69/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/73/ 2012 CU[DB]** dated 08.02.2012

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. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult
MR.S.D.GAUR
SB-108, SHASTRI NAGAR,
GHAZIABAD.

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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

Customs Stay Application No.C/S/2695/2011 in
Customs Appeal No.C/502/2011

M/s. Nippon Audiotronix Ltd. ...Appellant

Vs.

XX (ICD), New Delhi ... Respondent

Present for the Appellant : Shri S.D. Gaur, Advocate
Present for the Respondent:Shri.R.K. Gupta, SDR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing/Decision: 08.02.2012

Stay order No. C/S/69/12-Cus.

Final **ORDER NO.** C/A/73/12-Cus **DATED:** __________

PER: D.N.PANDA

Ld. Counsel submits that the goods imported by the appellant shall fall under the heading 8519 and entitled to the abatement of 35%. Whereas Revenue's claims is that said goods shall fall under heading 85 and shall enjoy abatement of 30%. It is submitted on behalf of the appellant that the goods imported were car MP3 Player and that is different from MP3 player. Therefore, the appellant shall succeed.

2. Heard Shri Gupta ld. Representative for Revenue. He says that bill of entry presented clearly shows that the goods in question were MP3 player that is prefixed by the word 'CAR' that does not bring a change to the goods dealt by heading 85 under Sl. No.92 of Notification No.49/08-CE (NT) dated 24.12.2008. Therefore, the appellant was rightly allowed abatement of 30%.

3. Heard both sides and perused the record. No doubt, adjudication order has simply dealt valuation aspect. But when such valuation touched the very class of the goods, appellate authority elaborately dealt the same by his order dated 4.5.2011. It does not appeal to commonsense that the Car MP3 player is different from MP3 player. Therefore, we tried to find out what is the difference between the entry under the heading 8519 and Chapter 85 itself dealing with MP3 player. The heading 8519 deals with all goods other than MP3 player. The appellant claims that it will not come under that expression on the conception that the Car MP3 player is other than MP3 player. We, therefore, looked into the detailed description in the tariff entry. It appears that appellant's claim is under the heading 8519 & 8990 which deals with other goods. Whereas MP3 player is specifically dealt by the heading 8519 & 8590. Once there is clear expression of the heading with the class of

the goods there is nothing confusion to hold that the appellant's goods are different. Therefore, the goods of the appellant shall only enjoy abatement of 30% for which the appeal is dismissed. When we have taken decision as above, the stay application gets disposed by waiver of pre-deposit.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita