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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/151 /2008 - CU[DB] Date **29/03/2012**

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

To :
M/S TOSHA INTERNATIONAL LTD.
F-34, ND FLOOR, CONNAUGHT CIRCUS,
NEW DELHI-110001

M/S TOSHA INTERNATIONAL LTD. Appellant

Vs

C.C. (EXPORT) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/89/ 2012 CU[DB]** dated 14.03.2012 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. (EXPORT) NEW DELHI
AIR CARGO EXPORT, NEW
CUSTOM HOUSE,
NEW DELHI 110037

2. Adv. / Consult
MR.RAJESH CHHIBBER
FA/9, NEW KAVI 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)

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

Customs Appeal No. 151 of 2008

[Arising out of Order-in-Appeal No. 330/2007 dated 29.11.2007 passed by the Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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. Tosha International Ltd. Appellants

Vs.

Commissioner of Customs Respondent
New Delhi

Appearance:
Shri Rajesh Chibber, Advocate for the Appellants
Shri Amrish Jain, SDR for the Respondent

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

Date of Hearing/decision : 14.3.2011

Final **ORAL ORDER NO.** C/A/89/12- Cus.

<u>Per Archna Wadhwa (for the Bench)</u>:

The appellants imported silicon oil from Hong Kong to be used in the manufacturing of black and white TV picture tube under concessional rate of duty of Customs in terms of notification No. 64/95. The said notification provided a condition of submitting the consumption certificate from the concerned authority within three months of the date of import confirming that the imported goods were used as specified in the said notification.

2. Inasmuch as the appellants could not produce the requisite certificate, the bond executed by them was confirmed by the adjudicating authority to the extent of demand of Rs.1,18,458/- and for imposition of penalty to Rs.10,000/- . Appeal against the same ~~was~~ failed ~~filed~~ before the Commissioner (Appeals), which appeal was rejected.

3. It is seen that only ground for denial of benefit of notification is that the appellants failed to provide the certificate within three months of date of import confirming use of the goods as specified in the notification. Our attention stands drawn to the correspondence entered into by the appellant with their jurisdictional Range Central Excise office making a request for issuance of end use certificate. Reference in this regard is made to the appellants letter dated September, 2000, 27.3.2001, 15.12.2006, 16.1.2007 and 5.6.2007. As per the appellants the said certificate has to be issued by their Range Central Excise authorities. Inspite of having written so many letters to the Department, there is no response to their request for issuance of said certificate.

4. At this stage, our attention is drawn to a letter dated 30.6.2008 addressed to the Assistant Commissioner, Central Excise division, NOIDA, Jt. CDR clarifying that the certificate could not be issued on account of non-submission of relevant documents by the party. However, it nowhere stand shown to us that the Central Excise officers directed the appellants to submit such documents, at any point of time. The said letter also does not disclose as to whether the various letters written by the appellants ~~are~~ were responded to. As such appellants could not be penalised on the lapse of the concerned office, inasmuch as the issuance of certificate is in the hands of the Central Excise officer having jurisdiction over the appellants factory. We accordingly, set aside the impugned order remanding the matter to the original adjudicating authority for fresh decision. The Central Excise officer having jurisdiction over the appellants factory would consider the issuance of the certificate, as soon as possible, under intimation to the appellants and would submit their report to the concerned Customs authorities for further action on his ~~appeal~~ matter.

5. The appeal is disposed of in the above manner.

(Operative part of the order pronounced in the open Court)

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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