IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: C/85194/2013

[Arising out of Order-in-Appeal No: 433-434/MCH/DC/ Gr. VIIB/2012 dated 01/08/2012 passed by the Commissioner of Customs (Appeals), Mumbai.]

For approval and signature:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	:	Yes
2.	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	Yes
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

Western Cans Pvt. Ltd. … ***Appellant***

versus

Commissioner of Customs (EP)
Mumbai …***Respondent***

Appearance:

None for appellant

Shri Bhushan Kamble, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing:	**20/02/2019**
Date of decision:	**20/03/2019**

ORDER NO: A/85540 / 2019

Per: C J Mathew

This appeal lies against order-in-appeal no. 433-434/MCH/DC/ Gr. VIIB/2012 dated 1st August 2012 of Commissioner of Customs (Appeals), Mumbai which has upheld the order of the original authority confiscating 1380 kgs of 'darex can sealing compound', imported under the Duty Exemption Entitlement Certificate (DEEC) Scheme, and entitled to exemption under notification no. 43/2002-Cus dated 19th April 2002. According to the lower authorities, the import is permissible to 'lining compound' as per the licence but the impugned goods are 'can sealing compound' which is an entirely different good and, hence, ordered to be liable to differential duty of ₹86,417/- as well as confiscation but permitted to be redeemed on payment of ₹ 50,000/-.

2. The issue in dispute is the coverage of the imported product under the description of 'lining compound'. Reliance has been placed on the test report of the Deputy Chief Chemist dated 28th May 2008.

3. None appeared for appellant. We have heard Learned Authorised Representative.

4. A perusal of the test report, relied upon by the lower authorities, opining that

> *‘The product data sheet on “Darex” shows the same as can sealants. In this connection, it is stated that can Sealing Compound is used for Sealing the joints of cans, whereas the Lining Compound find use in different industrial applications. The literature submitted does not impart any relevant information on the use as Lining Compound. Hence the can Sealing Compound and Lining Compounds may not be considered as one and the same.’*

displays lack of expert analysis of the two rival descriptions and that the product data sheet and literature alone has led to the conclusions which also appears to be no less tentative.

5. Accordingly, we find that the impugned order is in error and must be set aside. Appeal allowed.

(Pronounced in Court on 20/03/2019)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

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