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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 27/12/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71927/2017-SM[BR] dated 19/09/2017

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the **Central Excise and Salt Act, 1944.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/70504/2017	**Commissioner of CUSTOMS-Meerut-i** EXCISE CHOWK...UNIVERSITY ROAD, MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH 250005
		Name and Address of Respondent
2		Wave Industries Nagina Road,, BIJNORE, UTTA R PRADESH

Copy To

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Second Folder Copy 16 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/70504/2017-EX[SM]

(Arising out of Order-in-Appeal No. MRT/EXCUS/000/APPL-I/15/2017-18 dated 17/04/2017 passed by Commissioner of Central Excise & Customs (Appeals-I), Meerut)

Commissioner of Central Excise & Service Tax, Meerut-I **Appellant**

Vs.

M/s Wave Industries **Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt.) AR for Appellant
Request for Adjournment for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 19/09/2017
Date of Decision : 19/09/2017

FINAL ORDER NO.–71327/2017

Per: Anil Choudhary

The issue in this appeal is whether the transaction being, transfer of rights and privilege of export of 'sugar quota' by the respondent assessee on receipt of consideration, whether the same is a service or transaction in goods.

2. Heard the parties.

3. I find from the impugned Order-in-Appeal that the Learned Commissioner (Appeals) have placed reliance on the ruling of Hon'ble Supreme Court in Vikas Sales Corporation and another v/s Commissioner of Commercial Taxes, (1996) 4

SCC 433, wherein the issue before the Court was whether the transfer of REP licence/Exim scrips by the holder thereof to another person constitutes a sale of goods within the meaning of, or for purposes of the sales tax enactment of Tamil Nadu, Karnataka and Kerala. The Hon'ble Supreme Court relying on the definition of goods as defined in clause (d) of Section 2 of the Central Sales-Tax Act, 1956, which defines goods as – goods includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities. "what is relevant to note is that this definition is not only inclusive in nature, but takes in all kinds of movable property. It excludes from its ambit certain items, but for such exclusion may have fallen within the ambit of the said definition." It was further held that the licenses have a value of its own. It is by itself a 'property' and it is for this reason that it is freely bought and sold in the market, for all purposes and intent, it is goods. Unrelated to the goods which can be imported on its basis, this commands a value and is treated as such. This is because it enables its holder to import goods which he cannot do otherwise.

4. The said ruling was again followed by a full Bench of Hon'ble Supreme Court in Yasha Overseas v/s Commissioner of Sales Tax and others, alongwith other appeals, reported in (2008) 8 SCC 681, wherein the Hon'ble Supreme Court was considering the ruling in the case of Vikas Sales Corporation

v/s CCT, by the earlier Bench holding that the transfer of an import licence called as REP licence granted under the 1992-1997 Exim policy, was exigible to sales tax, is impliedly overruled by the Constitution Bench decision in M/s Sunrise Associates versus Government of NCT of Delhi, that held that lottery tickets where actionable claims and where, therefore, excluded from the definition of goods under the Sales Tax Act and hence the sale of lottery tickets was not subject to sales tax, and the earlier Two Judge Bench decision in the case of H. Anraj versus Government of Tamil Nadu, holding otherwise, did not lay down the correct legal position?

5. The Hon'ble Supreme Court have made the following observations: -

"We are afraid, we find the submission unacceptable. We are unable to see DEPB either as a debt or as a beneficial interest in movable property not in possession of the claimant. To us it is plain that DEPB like REP licence has its own intrinsic value and the purchaser, on payment of consideration, buys something for its value. DEPB credit is thus clearly "goods" within the meaning of sales tax laws and its sale is clearly exigible to tax.

We may observe here, if DEPB (or for that matter REP licence!) has to be compared with a lottery ticket, it can only be compared with a lottery ticket that has won the prize. The prize-winning lottery ticket ceases to be a mere piece of paper having no value itself. It acquires inherent value and becomes *itself a thing of value. Imagine a situation where prize-winning lottery tickets are freely available for sale. (As a matter of fact, clandestine sale of the prize-winning lottery ticket for conversion of black money into white is not completely unknown!) In buying the prize-winning lottery ticket the purchaser would pay the consideration for the value that the piece of paper has acquired and in that situation we fail to see how that ticket can be described as anything else but "goods".*

If any more analogies are to be given one might compare DEPB with prepaid meal tickets or prepaid petrol coupons or accumulated flying miles. A meal ticket, a petrol coupon or flying miles credit has its own intrinsic value. If permitted free transferability those would soon become market commodities and would be sold and bought for their value as "goods".

In light of the discussions made above, the two questions framed at the beginning of the judgment are to be answered as follows: The Constitution Bench decision in Sunrise does not alter the position in regard to levy of tax on sale of REP licence and on that issue the three-Judge Bench decision in Vikas continues to be hold the field.

DEPB has an intrinsic value that makes it a market commodity. Therefore, DEPB, like REP licence qualifies as "goods" within the meaning of the sales tax laws of Delhi, Kerala and Mumbai and its sale is exigible to tax.

We thus find no merit in any of these appeals. All appeals are dismissed but with no order as to costs."

6. Having considered the rival contentions and in view of the ruling of Hon'ble Supreme Court in the case of Vikas Sales Corporation (supra), which have been reaffirmed by the Hon'ble Supreme Court in Yasha Overseas and others (supra), I hold that the transaction in question regarding 'sale of rights and privilege of export of sugar quota' is sale of goods and no service is involved. Accordingly I dismiss this appeal and confirm the Order-in-Appeal. The Misc. Application for stay also stands disposed of accordingly.

(Dictated and pronounced in Court)

-Sd/-

(ANIL CHOUDHARY)
Member(JUDICIAL)

Ankit

प्रमाणित प्रति/Certified True Copy

29/01/18