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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

Dated: **06/08/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52375/2015-CU[DB]** dated **15/07/2015**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **129-A(4) of the Customs Act, 1962.**

Asstt. Registrar(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/525/2010	
		New Custom House, Near I.G.I. Airport, new Delhi 110037.
		Name and Address of Respondent
2		PARAS INTERNATIONAL 117, POCKET-E/4, SECTOR-7, ROHINI, NEW DELHI-110085.

3Advocate(s) / Consultant(s):

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise, I.P. Estate, Delhi
7 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
14 C.D.R. 15 Office Copy 16 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 15.7.2015

Appeal No. C/525/2010-CU(DB)

(Arising out of Order-in-Appeal No.CC(A) Cus/Prev.57/2010 dated 30.6.2010 passed by the Commissioner of Customs (Prev,), New Delhi)

For Approval & Signature :

Hon'ble Mr. Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would 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 Department Authorities?	

CC, New Delhi Appellant

Vs.

M/s Paras International Respondent

Appearance:

Ms. Suchitra Sharma, D.R. - for the Appellant

None - for the Respondent

Coram : **Hon'ble Mr. Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

F. Order No. 52375/2015

Per **R.K. Singh :**

Revenue is in appeal against order-in-appeal dated 30.6.2010 which remanded the appeal filed by the respondent to the primary adjudicating authority with the direction to *"revisit the issue to pass a fresh order taking into account the above facts and any other material evidence with the department and after giving the appellants to* *present their case as early as possible in the light of 2006 (204) ELT 31 (Delhi) and 2001 (116) ELT 101 (Tri-Kolkata)".*

2. The primary adjudicating authority vide its order dated 15.12.2009 passed the order reproduced below:

(i) *The impugned goods i.e. 74,480 MTs of RBD Palmolein, valued at Rs.26.78 lakhs, classifiable under CTH 1511,90.20 are liable for confiscation under Section 111(m) of the CA, 1962. However, as the goods are not available and clearance was not made under Bond/Bank Guarantee, they cannot be confiscated.*

(ii) *I confirm the demand of Rs.13,61,550/- (Rs. thirteen lakh sixty one thousand five hundred and fifty only) against M/s Paras International under proviso to Section 28(1) of the CA, 1962, along with appropriate interest.*

(iii) *I impose a penalty of Rs.13,61,550/- (Rs. thirteen lakh sixty one thousand five hundred and fifty only) upon M/s Paras International under Section 114(A) of the CA, 1962.*

(iv) *I do not impose any penalty under Section 112(a) of the CA, 1962 as penalty under Section 114(A) of the CA, 1962, has already been imposed.*

(v) *I impose a penalty of Rs. 1 lakhs (Rs. one lakhs only) on M/s JMD Oils (P) Ltd. under Section 112(b) of the CA, 12962.*

(vi) *I do not impose any penalty on Shri Manoj Jain as the penalty has already been imposed on his proprietorship concern, M/s Paras International."*

In its appeal, Revenue has contended that Section 128A(3) of the Customs Act, 1962 was amended from 11.5.2001 vide which the expression *"or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or* *decision as the case may be, after taking additional evidence, if necessary",* appearing in that sub-section was deleted. As a result of the said amendment, the Commissioner (Appeals) has been divested the power of remand and cited the judgement of Supreme Court in the case of ***MIL India Ltd. Vs. CCE*** – 2001 (210) ELT 188 (SC).

3. When the case was taken up, there was no representation on the part of the respondent.

4. We have considered contention of Revenue. We find that after the amendment of Section 128A(3) the Commissioner (Appeals) has indeed been divested of the power of remand by deleting the expression *"or may refer the case back to the adjudicating authority with such direction as he may think fit for a fresh adjudication or decision as the case may be, after taking additional evidence, if necessary",* from Section 128A(3). The Supreme Court in the case of **MIL India** (supra) while interpreting a pari materia amendment to Section 35A of the Central Excise Act, 1944 has observed that *"In fact, the power of remand by the Commissioner (Appeals) has been taken away by amending Section 35A with effect from 11.5.2001 under the Finance Bill, 2001. Under the Notes to clause 122 of the said Bill it is stated that clause 122 seeks to amend Section 35A so as to withdraw the power of the Commissioner (A) to remand matters back to the adjudicating authority for fresh consideration."*

5. In these circumstances, we allow Revenue's appeal and remand the case to the Commissioner (Appeals) with the direction to decide the case on merit.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

RM