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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: **04/12/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/53552/2015-CU[DB]** dated **18/11/2015**

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/239/2010	**GALAXY STAR TRADING CO.** Inside Sojati Gate, Khatan Manzil, Kavi Rajaji Ka Bada Jodhpur, Rajasthan.
		Name and Address of Respondent
2		-C.C.(JODHPUR) HQ at New Central Revenue Building, Statue Circle, C Scheme, Jaipur 302005.

Copy To
3Advocate(s) / Consultant(s):

Om. P. Agarwal & co.
56, Section - 7, N.P.H Road,
Jodhpur,
Rajasthan

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 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
15 C.D.R. 16 Office Copy 17 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 : 18.11.2015

Appeal No. C/239/2010-CU(DB)

(Arising out of Order-in-Appeal No. 08/KKG/CUS/JPR-II/10 dated 27.4.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur)

For Approval & Signature :

Hon'ble Mr. R.K. Singh, Member (Technical)
Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)

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?	

M/s Galaxy Star Trading Company — Appellant

Vs.

CC, Jodhpur — Respondent

Appearance:

Shri O.P. Agarwal, C.A. - for the Appellant

Shri Ranjan Khanna, D.R. - for the Respondent

Coram : **Hon'ble Mr. R.K. Singh, Member (Technical)**
Hon'ble Ms. Sulekha Beevi, C.S., Member (Judicial)

F. Order No. 53552/2015

Per **R.K. Singh :**

Appeal is filed against order-in-appeal dated 27.4.2010 in terms of which the Commissioner (Appeals) upheld the redemption fine of Rs.2,70,000/- and penalty of Rs. one lakh on the appellant on the ground that it imported new radial tyres on a date after 24.11.2008 when imports of such tyres were restricted by DGFT in terms of Notification No. 64(RE)/20082004-2009 dated 24.11.2008 and the appellant did not have any import license for the import of such tyres thereby rendering them liable to confiscation under Section 111(d) of the Customs Act, 1962.

2. The ld. Consultant for the appellant states that while it is a fact that the import took place after the restriction was imposed on 24.11.2008 by DGFT, it had taken concrete steps for the import of the same prior to 24.11.2008 inasmuch as in response to the proforma invoice dated 13.10.2008 it sent part payment of US $ 14,300/- out of total US $ 37,016/- and having made such part payment it was not possible to back out without adverse financial consequences. It cited in its support judgements of CESTAT in the case of ***P.T. Impex Pvt. Ltd. Vs. CCE*** - 2014 (302) ELT 154(T) and ***CCE, Vs. P.T. Impex*** - 2015 (321) ELT 38 (P&H) and also in the case of ***Viraj Impex Ltd. Vs. CC, Mumbai*** - 2004 (177) ELT 960 (Tri.).

3. ~~The~~ Ld. DR, on the other hand, contended that in this case there is no contract nor was there any letter of credit established prior to 24.11.2008 and the shipment took place after the restriction was imposed by DGFT. Therefore the impugned order is sustainable.

4. We have considered the contentions of both sides. The contention of Revenue is there was no agreement between the appellant and the foreign supplier entered into before 24.11.2008 for supply of the impugned goods. However, an agreement need not always be in writing. In the present case, we find that there was a proforma invoice of 13-10-2008 in response to which part payment of US $.14,300/- was sent on 18.11.2008 which was prior to the imposition of restriction on 24.11.2008. Thus there is certainly substantial force in the contention of the ld. Consultant that ~~these~~ all this amounts to concrete steps taken prior to 24.11.2008 for the import of the impugned goods because the appellant would not have been in a position to back out without the risk of losing money. In these set of circumstances, we agree with the appellant that making part payment against a proforma invoice would constitute concrete steps for import of impugned goods and as these steps were taken prior to 24.11.2008, the ratio of CESTAT judgement in the case of ***P.T. Impex Pvt. Ltd.*** (supra) would be applicable. Para 8 of the said judgement is reproduced below :-

> "**8.** In the light of the fact that the proforma invoice is dated 30-3-2006, the remittance for the value of sandalwood to be imported was also made on 30-3-2006; the customs invoice, the fumigation certificate and the Bill of lading, though issued later establish a concretised agreement for export of sandalwood prior to 7-4-2006 (when the restriction on import of sandalwood were issued by the policy circular). The agreement to import the sandalwood thus got crystallised prior to 7-4-2006. The High Court decision in *Matraco (India) Ltd.* v. *Union of India* -

2003 (162) E.L.T. 1192 (Bom.) is an authority for the proposition that since the import of the sandalwood was *bona fide*, there is no justification for imposing a redemption fine or confiscating the goods; and that existence of a concluded contract could be inferred from other circumstances, even in the absence of an irrevocable letter of credit. The material on record establishes on the basis of the relevant circumstances that an agreement between the parties for the export and import was entered into and had crystallised prior to the change in the policy. The appellant is entitled to paragraph 1.5 of Chapter 1A of the *FTP 2004-09*. The decision of this Tribunal in *Viraj Impex Ltd.* v. *CC, Mumbai* - 2004 (177) E.L.T. 960 (Tri.-Mumbai) is an authority for the proposition that where an importer has entered into a contract in good faith, at a time when goods were importable freely, without restrictions; and had no means to forseeing restrictive changes in the import policy, there is no justification for imposing a redemption fine.

The Punjab & Haryana High Court dismissed Revenue's appeal against the said order vide order reported at 2015 (321) ELT 38 (P&H). Indeed similar view was also held in the case of ***Viraj Impex Ltd.*** (supra).

5. In view of the aforesaid analysis, we set aside the redemption fine and penalty and allow the appeal.

(R.K. Singh)
Member (Technical)

(Sulekha Beevi, C.S.)
Member (Judicial)

RM