FAX : 011-26108426

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: 20/01/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/53887-53890/2015-CU[DB] dated 23/12/2015

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.**

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/247/2010	ICD, Tughlakabad, New Delhi 110020.
2	C/248/2010	ICD, Tughlakabad, New Delhi 110020.
3	C/249/2010	ICD, Tughlakabad, New Delhi 110020.
4	C/250/2010	ICD, Tughlakabad, New Delhi 110020.
		Name and Address of Respondent
		PLAST KRAFT INDUSTRIES 205, Aradhana Bhawan, 2nd Floor, Azadpur Commercial Complex, Delhi..
		SUN RISE INDUSTRIES 201, Aradhana Bhawan, 2nd Floor, Azadpur Commercial Complex, Delhi..
		SUN BEAM INDUSTRIES Plot No. 489, Khasra No. 65, Shahabad-Daulatpur, Bawana Road, Delhi..
		SHRI AJIT KUMAR GUPTA A-20, Panchvati, Delhi..

Other Appellants and Respondents as per Annexure

DB-D

Copy To
9Advocate(s) Consultant(s):

V. Lakshmi Kumaran
5, Jangpura Extension,
Link Road,
New Delhi,
Delhi-110014

10 Additional Party's Name & Address :
11 Bar Association. CESTAT. Delhi
12 Director Publications. Customs. Excise. I.P. Estate. Delhi
13 M/s Centax Publications Pvt. Ltd.. 1512-B. Bhishm Pitamah Marg. New Delhi-3
14 Company Law Institute of India Pvt. Ltd., No.2 (old no.36). Vaithyaram Street. T. Nagar. Chennai-17
15 Taxmann Allied Service Pvt. Ltd.. 59/32. New Rohtak Road. New Delhi-110005
16 Easy Service Tax Online Dot Com Pvt. Ltd.. 407A. Iscon Mall. Satellite Road. Ahmedabad-15
17 LAWCRUX Advisors Pvt. Ltd.. LAW House. 1-8. Sector-10. Faridabad 121003 (Haryana)
18 TaxIndiaOnline.com Pvt. Ltd.. 2nd Floor. Vasant Arcade. Vasant Kunj. New Delhi - 110070
19 Mark Professional Services Pvt. Ltd.. 108. Everest Block. Aditya Enclave. Hyderabad 38
20 The ICFAI society. 52. Nagarjuna Hill.Punjagutta Hyderabad. 500082
21 C.D.R.   22 Office Copy   23 Guard File

20/01/16
Deputy/Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 23.12.2015

Customs Appeal Nos.247 – 250 of 2010

Arising out of the order in original No.12/2010/John Joseph/commissioner dated 26.2.2010 passed by the Commissioner of Customs, ICD, New Delhi.

For approval and signature:

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

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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 Departmental authorities?	

C.C. (Preventive), New Delhi .. Appellant

Vs.

Plast Kraft Industries
Sun Rise Industries
Sun Beam Industries
Shri Ajit Kumar Gupta .. Respondents

Appearance:

Present Shri Vaibhav Bhatnagar, A.R. for the appellant/Revenue
Present Shri S. Vasudevan, Advocate for the respondents/assessees

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

Final Order No . 53887 – 53890/2015

Per R.K. Singh:

Revenue is in appeal against order -in- original dated 26/02/2010 which was issued in the wake of CESTAT (that time known as CEGAT) Final Order No. 348 - 351/2001 dated 13/09/2001. CESTAT in its final order dated 13/09/2001 set aside the primary adjudication order dated 30/03/2001 and ordered Revenue to provide legible copies of the relied upon documents and return the non-~~dried~~ relied upon documents to the parties. The adjudicating authority in its impugned order has *inter alia* observed as under

> *v. I also observe from the report of the inspector of SIIB dated 23.11.2001 in which he has reported that he as per the order of the Hon'ble CEGAT and on instruction of the Dy.Commissiioner of Customs SIIB, tried to locate the seized records of the party and after searching many almirahs filled with old records, he could trace only few files from different almirahs and the party was asked to collect the same.He further reported that part of the old non-relied files were handed over the party on 15.10.2001 and 9.11.2001. He also reorted that while weeding out old records and shifting of junk items, lying dumped in the room of SIIB, remaining three files seized from the parties were also recovered. Thus, all the seized files have been found. But, except Panchnama and statements none of the relied upon documents would be seen anywhere. All the files so recovered contained only un-relied documents and except three which were already handed over to the party, as per order of the Hon'ble CEGAT, under proper receipt. He also reported that many of the non-relied documents were also not found in the files. He further reported that the investigating officer was also contacted by Dy. Commissioner (SIIB) to visit NCH on 22nd November, 2001.The investigating officer after going through the files reported that although he investigated the case, but he did not know the whereabouts of the relied upon documents and further added that the seized records had passed through may hands, but on no occasion any handling over/taking over was done neither by him nor by any of the*

inspectors, then posted in the branch.The inspector SIIB further reported that the original relied upon documents, in spite of thorough efforts could not be found in any alhirahs/racks.

xiv. Presently there are only 2 options available to me. One is to pass an order on the merit based on the photocopies of RUD's, some of which are not legible which were already supplied to the notices, second is to wait for the original documents to surface and keep the case pending unendingly. Adopting the first option will lead to violation of principles of natural justice as cited in the various judgments cited above and will make the order infrcutuous ab initio. Waiting for the original documents to surface may not be giving any positive results as the Import & General Commissionerate who were the custodian of the documents and who investigated the case have categorically stated that the original documents are not available and hence the original of the RUD's cannot be given for inspection. The Chief Commissioners office also reiterated the same. Keeping the file pending is not going to result in recovery of any of the original documents as already ten years have lapsed from the detections of case and issue of which are pending for adjudication for more than 1 year. Thus, the CESTAT direction while remanding the case back to the adjudicating cannot be fulfilled and hence, I have no other option but to pass an order not on merits, but on the limited premise of violation of principles of natural justice

2. Indeed, when this case came up before CESTAT earlier on 12/08/2015 it passed the following order:

ORDER

Ld. A.R. for Revenue seeks time to file copies of RUDs and non relied upon documents which were considered in the order of the Chief Commissioner constituting a Review Committee which is the basis for present appeals. It is contended by Revenue that impugned adjudication order is flawed and a substantial portion of the demand should have been confirmed on the basis of RUDs and non-RUDs which were furnished to Assessees contest receipt of these documents. Revenue *shall prepare an executive summary of its appeals while submitting further material for reliance in the appeals. Adjourned to 21.10.20105, in presence of both the parties. No fresh notice need be issued.*

3. When the case is taken up today we find that the revenue is not able to file copies of the RUDs which were considered in the order of the Chief Commissioners constituting the review committee which is the basis for present appeals by Revenue. Thus the directions of CESTAT contained in its orders dated 13.9.2001 and dated 12.8.2015 have not been complied with. The appellants have all along contested the receipt of the documents and this fact is clearly and rightly recorded in the above quoted paragraphs of the impugned order. The adjudicating authority has clearly stated that the CESTAT direction while remanding the case back to the adjudicating authority cannot be fulfilled and hence he has no other option but to pass an order not on merits but on the limited premise of violation of the principles of natural Justice.

4. In the circumstances we do not find any ground to interfere with with the impugned order and accordingly Revenue's appeals are dismissed.

(Justice G. Raghuram)
President

(R.K.Singh)
Technical Member

scd/