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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

Appeal No. C/793 /2005 Date 04/09/2008

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M.B.ENTERPRISE
SHOP NO.278 1ST FLOOR, NEW LAJPAT RAI
MARKET, DELHI
M.B.ENTERPRISE Appellant

Vs

1. JOINT COMMISSIONER OF CUSTOMS Respondent
(PREVENTIVE), NEW

I am directed to transmit herewith a certified copy of **Final order No.** C/331/08-CUS. DATED 09.07.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar

(Customs Appeal Branch)

**Copy to :**

1. Respondent
   JOINT COMMISSIONER OF CUSTOMS (PREVENTIVE),
   NEW CUSTOMS HOUSE, NEAR IGI AIRPORT, NEW DELHI
2. Adv. / Consult
   MR.RAJESH RAWAL, ADV., 249,
   LAWYERS CHAMBERS, HIGH COURT OF INDIA,
   NEW DELHI.
3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat;Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14. Easy Service Tax Online Dot Com Pvt. Ltd. 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad - 15
15. Office Copy
16. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

**Custom Appeal No. 793 of 2005**

(Arising out of Order-in-Appeal No. CC(A)CSP(153)D II/2005 dated 10.5.2005 passed by the Commissioner of Customs (Appeals), New Delhi)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR. MEMBER (TECHNICAL)

| | | |
|---|---|---|
| **1.** | Whether Press Reporters 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 Departmental authorities. | |

M.B. Enterprises — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:
Shri Rajesh Rawal, Advocate - For appellant
Shri Amit Jain, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 9.7.2008

Final Order No. C/331/08 dated 9/7/08

***Per S.S. Kang:***

The appellant filed this appeal against the impugned order whereby bars viz. pen cells and button cells were confiscated on the ground that the same were smuggled into India and allowed to be released on payment of redemption fine and penalties were imposed.

2. The brief facts of the case are that on 10.12.2002 the business premises of the appellant was searched by the Custom officer. Pen cells and button cells were found in premises which were seized on the reasonable belief that the same were smuggled into India. The appellant produced evidence by way of invoices regarding purchase of the goods in question. The invoices were issued by M/s Norma Electronics and M/s Skylight Enterprises who imported the goods in question in India. After taking into consideration the evidence produced by the appellant in respect of lawful import into India, the packages having MRP stickers fixed were released and the packages not having MRP stickers were confiscated on the ground that the as per Foreign Trade, Development and Regulation Act, the Director General of Foreign Trade vide Notification dated 24.11.2000 regulated the import of commodities. As per the notification all packaged products, are subject

to compliance of Standards of Weights and Measures (Packaged Commodities) Rules, 1977, when imported into India. As some of the packages are not having stickers of having MRP i.e. Maximum Retail Price, therefore, such packages has not crossed the barrier of customs hence liable for confiscation.

3. The contention of the appellant is that the goods in question were purchased from M/s Norma Electronics and M/s Skylight Enterprise. The appellant produced all the invoices under which the goods were purchased. The relevant bills of entry were also obtained from M/s Norma Electronics and M/s Skylight Enterprise who submitted to the Custom authorities to show lawful import of the goods in question. The contention is that merely non-availability of stickers of MRP after the goods have been released from the Custom barrier in no ~~matter~~ way can suggest that subject goods have been unlawfully imported into India, therefore, the confiscation of the goods, in question, is not sustainable.

4. The contention of the Revenue is that at the time of import it is mandatory that all the package commodities imported into India are required to carry name and address of importer, net quantity of goods, manufacture and year of packing and maximum retail price, as the goods in question are not having stickers of MRP, therefore, rightly confiscated.

5. In this case, the case of the Revenue is that the goods were smuggled into India. The appellant produced evidence in support of purchase of the goods and also produced Bill of Entry under which the goods were imported into India. As the goods are not notified goods and same are under the OGL, therefore, burden is on the Revenue to prove that the goods in question are smuggled in nature. In the case of **Hindustan Bearing Corporation Vs. CC** reported in 1990 (50) ELT 91, the Tribunal held that even in case of foreign marking on goods, the burden is on the Revenue to prove the smuggled nature of non-notified goods. In the present case, the appellants are produced the Bill of Entries under

which the goods in question were imported the same were taken into consideration by the adjudicating authority. The goods were held to be liable for confiscation on the ground that the seized goods were not the same which were imported under the Bills of Entry produced by the appellant. The only ground to arrive at such conclusion was that MRP stickers were not on the packages. Merely absence of MRP stickers on the packages without any other cogent evidence cannot be lead to a conclusion that goods are smuggled in nature. In these circumstances, the impugned order is not sustainable hence set aside. The appeal is allowed.

(Operative part of the order pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

RM