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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/721 /2008 - CU[DB] C/STAY/2278/2008 Date 05/01/2009

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

To : SHRI CHANDER SHARMA, PROPRITER OF
MAA BHAGWATI ENTERPRISES
66-A, RAMNAGAR, TEHSIL CAMP, PANIPAT.

SHRI CHANDER SHARMA, PROPRITER OF Appellant

Vs

C.C. (ICD) NEW DELHI STAY ORDER NO.C/358/08-CUS. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/671/08-CUS.** DATED 18.12.08 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
   C.C. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI 110020.
2. Adv. / Consult
   MR.K.K ANAND, ADV.
   A-5,BASEMENT,LAJPAT NAGAR-III NEW DELHI-24
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 - 3
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. Nideshak 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
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Stay Application No.2278 of 2008
In Customs Appeal No.721 of 2008

[Arising out of Order-in-Original No.39/2008 dated 19.06.2008 of the Commissioner of Customs, New Delhi]

Date of Hearing/ Decision:18.12.08

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : No
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? : Yes

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Shri Chander Sharma ...Appellants
[Rep. by Shri Hemant Bajaj, Advocate]

Vs.

CC, New Delhi ....Respondent
[Rep. by Shri S.L. Kumar, DR]

CORAM: Hon'ble Mr. P.K. Das, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Final Order No. C/671/08 /Dated:18.12.2008
Stay Order No C/358/08

Per P.K. Das:

After hearing both the sides and on perusal of the records, we find that the issue involved in this case is in narrow compass and, therefore, after granting stay, the appeal is taken up for hearing.

2. The appellant filed this appeal against imposition of penalty of Rs.6 Lakhs under Section 112 of the Customs Act, 1962.

3. Ld. Advocate submits that that the goods were confiscated and redemption fine was imposed of Rs.9 Lakhs. He also submits that the appellant disowned the goods. He further submits that the appellant placed order for synthetic rags but the foreign supplier by mistake imported readymade garments (trousers). In any event, the matter was decided by the Commissioner without affording any personal hearing.

4. On perusal of the impugned order, we find that the appellant has not been granted any personal hearing and the order was passed without granting any personal hearing.

5. In this context, the ld. Advocate relied upon the decision of the Tribunal in the case of P.K. Goel, New Delhi Vs. Collector of Customs, Delhi reported in 1983 (12) E.L.T 648 (C.E.G.A.T.), wherein it has been held that the personal hearing is mandatory under Section 124 of the Customs Act unless a person waives his right of personal hearing.

6. We do not find any material that the appellant waived the right of personal hearing. So, the impugned order is set aside and the matter is remanded back to the Commissioner to decide afresh after granting

proper opportunity of personal hearing to the appellant. The appeal is allowed by way of remand. Stay application is disposed of.

Order dictated & pronounced in open court on 18.12.2008.

(P.K. Das)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.