

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

Appeal No. C/30 /2008

Date 27/02/2008

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR

Appellant

Vs

M/S GUPTA AGRO INDUSTRIES

STAY ORDER NO.C/26/2008

Respondent

I am directed to transmit herewith a certified copy of Final order No. C/31/2008 Customs dated 20.02.08 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

M/S GUPTA AGRO INDUSTRIES

13-14, INDUSTRIAL FOCAL POINT, SANGRUR
(PUNJAB)

2. Adv. / Consult MR. R.K. HASIJA, ADV.,
B-6/10, SAFDERJUNG ENCLAVE,
NEW DELHI - 29.

3. S.D.R.

4. J.C.D.R.

5. Bar association, CESTAT, New Delhi

6. M/s. Deeparchi Publications, M-93, marg. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi

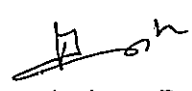
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. Guard file


Assistant Registrar
(Customs Appeal Branch)

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. 1

**Customs Appeal No. 30 of 2008 with
Customs Stay Application No. 132 of 2008**

(Arising out of Order-in-Appeal No. 116/Cus/App/Ldh/2007 dated 03.10.2007 passed by the Commissioner of Customs & Central Excise, Chandigarh).

**DATE OF HEARING : 20.02.2008
DATE OF DECISION : 20.02.2008**

FOR APPROVAL AND SIGNATURE :

**HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, 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 should 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?	

CC, Amritsar

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Appellants

(Rep. by Sh. B.K. Singh, DR)

VERSUS

M/s Gupta Agro Industries

Respondent

(Rep by Sh. R.K. Hasija, Adv.)

**CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. M. VEERAIYAN, MEMBER (T)**

Final ORDER NO. C/31/08
Stay Order No C/26/08

PER JUSTICE S.N. JHA :

The stay application came up for hearing. However, after hearing the parties for some time, we are of the view that the appeal itself can be finally disposed of.

2. This appeal by the Revenue is directed against the order of Commissioner (Appeals) dated 03.10.2007 allowing the appeal of the assessee/respondent. The dispute relates to levy of countervailing duty on Zinc Skimming. The learned Commissioner held that as the goods in question are not excisable, no countervailing duty could be imposed and accordingly set aside the order of the adjudicating authority. In coming to the said conclusion, he placed reliance on a decision of the Supreme Court in the case of **CCE, Jaipur vs J.K. Synthetics**, 2000 (120) ELT 54 (SC). The learned DR tried to distinguish the said decision. He contended that the decision was rendered on the facts of the case and has no bearing on the present dispute. We are unable to agree with the submission. The decision lays down a principle of law that where excise duty cannot be levied on any goods, no countervailing duty/additional duty can be levied. This, if we may say so with respect, is plain common sense. We, therefore, do not think that the Commissioner committed any error in upholding the claim of the assessee.

3. We find no merit in this appeal and accordingly dismiss the same.

(Dictated and pronounced in the open Court on the 20th day of February, 2008)

(JUSTICE S.N. JHA)
(PRESIDENT)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

Golay