

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

Appeal No. C/29 /2008

Date 27/02/2008

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

To :
M/S NAVSHAKTI INDUSTRIES PVT. LTD.
18/61, PUNJABI BAGH [WEST], NEW DELHI

M/S NAVSHAKTI INDUSTRIES PVT. LTD.

Appellant

Vs

Respondent

C.C. (ICD) NEW DELHI

STAY ORDER NO.C/25/2008

I am directed to transmit herewith a certified copy of Final order No. **C/32/08** Customs dated 20.02.2008 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.T.P.S.KANG

F-71, MOTI BAGH-I, NEW DELHI - 110021.

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 -I, NOIDA - 201301

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

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

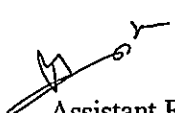
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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. 29 of 2008 with
Customs Misc. Application No. 63 of 2008 &
Customs Stay Application No. 131 of 2008**

(Arising out of Order-in-Original No. 04/2008 dated 09.01.2008 passed by the Commissioner of Customs, New Delhi).

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?	

M/s Navshakti Industries Pvt. Ltd **Appellants**
(Rep. by Sh. TPS Kang, Adv.)

VERSUS

CC, New Delhi **Respondent**
(Rep by Sh. B.K. Singh, DR)

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

Penal ORDER NO. C/32/08
Stay Order no. C/25/08

PER JUSTICE S.N. JHA :

This Appeal has come up for hearing along with the applications which have been filed for early hearing of the appeal and for stay. After hearing the learned counsel for the appellant and the learned DR for some time, we are of the view that the appeal itself is not maintainable before this Tribunal and, therefore, it is not necessary to pass separate orders on the aforesaid applications.

2. This appeal arises from an order of the Commissioner of Customs dated 09.01.2008, on application of the appellant under Section 110-A of the Customs Act, 1962. The said Section which was inserted by an amendment in 2006 (w.e.f. 14th July, 2006) provides for provisional release of goods etc. seized under Section 110, pending order of the adjudicating officer. The question is whether the appeal against such order is maintainable under Section 129-A before this Tribunal under the Customs Act. Section 129-A provides for appeal inter alia against a decision or order passed by the Commissioner of Customs "as an adjudicating authority". The order envisaged in Section 110-A cannot be treated to be an order in the nature of adjudication. As a matter of fact, as mentioned above, order in regard to the provisional release of goods etc. is to be passed "pending the order of the adjudicating officer" which clearly

shows that the order of release or non-release cannot be deemed to be an order in the nature of adjudication.

3. As a matter of fact, we are not sure whether in the instant case the adjudication is to be made by Commissioner himself or by any subordinate officer. It may also be relevant to mention here that the said application before the Commissioner for release of the goods was filed in the light of the order of the Delhi High Court dated 29.11.2007 in Writ Petition (C) No. 3813/2007. The appellant contends that the direction of the High Court was not carried out by the Commissioner; if that is so, it is open to the appellant to make grievance to that effect in the High Court. In the above premises, we are not inclined to entertain this appeal which is accordingly dismissed in limine.

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

(JUSTICE S.N. JHA)
(PRESIDENT)

(M. VEERAIYAN)
MEMBER (TECHNICAL)