

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

Appeal No. C/375 - 377 /2007, 635, 643-647/2007

Date 07/03/2008

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

To :
SHRI SUNIL KUMAR GOGIA
863, KATRA HIDDU, FARASH KHAN, DELHI

SHRI SUNIL KUMAR GOGIA

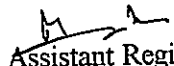
C.C.E ALLAHABAD

Appellant

Vs

Respondent

I am directed to transmit herewith a certified copy of Final order No. C/36-44/2008 Customs dated 07.02.2008 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.E ALLAHABAD

38, M.G.MARG, CIVIL LINES, ALLAHABAD

2. Adv. / Consult

MR. M/S S. JAINA & ASSOCIATES

84, DARYA GANJ, 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. 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

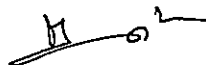
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

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 Nos. 375-377, 635, 643-647 of 2007

(Arising out of Order-in-Original No. MP(Dem-98/2005) 15 of 2007 dated 29.03.2007 passed by the Commissioner of Central Excise, Allahabad).

DATE OF HEARING : 07.02.2008
DATE OF DECISION : 07.02.2008

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT

HON'BLE MR. A.K. SRIVASTAVA, 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?	

Shri Sunil Kumar Gogia		Appellants
Shri Vimal Kalra		(Rep. by Sh. Piyush Kr. & P. Raman, Advs.)
Shri Hemant Gogia		
Shri Virendra Garg		
Shri Dinesh Kumar Agarwal	...	
Shri Himanshu Garodia		
M/s Jupiter Indus. Pvt. Ltd.		
Shri Santosh Kumar Jha		
Shri Binod Kumar Garodia		

VERSUS

CCE, Allahabad		Respondent
		(Rep by Sh. R.K. Verma, DR)

CORAM : HON'BLE MR. JUSTICE S.N. JHA, PRESIDENT
HON'BLE MR. A.K. SRIVASTAVA, MEMBER (T)

Final ORDER NO. C/36 to 44/08

PER JUSTICE S.N. JHA :

These nine appeals arising from the common order of the Commissioner of Central Excise were taken up together. We heard Shri Piyush Kumar, Advocate, appearing on behalf of the appellants Virendra Garg, Himanshu Gargodia, Binod Kumar Gargodia and M/s Jupiter Indus. Pvt. Ltd.; and Shri P. Raman, Advocate, appearing on behalf of Santosh Kumar Jha and Dinesh Kumar Agarwal. Shri R.K. Verma, Departmental Representative, appeared for the Revenue. Counsel for Sunil Kumar Gogia, Vimal Kalra and Hemant Gogia was not present at the time of hearing. However, in view of the fact that a common order has been passed and we propose to send back the matter to the Commissioner for fresh adjudication on a more or less common ground, we proceed to dispose of the said three appeals as well.

2. It may be stated here that these appeals came up for hearing on the point of waiver of pre-deposit, but as the grievance raised on behalf of the appellants goes to the root of the matter, we are of the view that the appellants are entitled to not only waiver of pre-deposit, but also fresh adjudication by the adjudicating authority.

3. Shri Piyush Kumar, advocate, appearing for the concerned appellants submitted that the case of the appellants was not considered at all by the adjudicating authority. He pointed out that one of the appellants, namely, Virendra Garg, had filed an interim reply which was not taken into account. As a matter of fact, he submitted, that the concerned appellants had filed application for return of non-relied upon documents, but no order was passed which resulted in denial of effective opportunity to file a proper reply. It was submitted that on two occasions the said appellants were present, either in person or through their counsel, but their presence has not been noticed in the order and ex parte order has been passed as if they had neither filed any reply nor put in appearance.

4. On behalf of the appellants Santosh Kumar Jha and Dinesh Kumar Agarwal, it was submitted that the appellants are paid employees and they have wrongly been roped in and fastened with the liability. He too made grievance of denial of effective opportunity of hearing as non-relied upon documents were not returned to enable the appellants to file reply.

5. After hearing learned counsel for the parties and the learned Departmental Representative, we are satisfied that the ex parte order, in the facts and circumstances of the case, cannot be sustained. We are of the view that that non-return of non-relied upon documents resulted in denial of opportunity to file reply amounting to violation of principles of natural justice and, therefore, it would be in the interest of justice to direct fresh adjudication by the adjudicating authority. We, therefore, set aside the impugned order so far as it

relates to the appellants mentioned hereinabove with a direction to the authorities to return the non-relied upon documents within four weeks from the date of receipt of this order. On receipt of documents, within four weeks thereof, the appellants should file their reply. The appellants shall also in the meantime be allowed inspection of the original/relied upon documents. If the appellants do not file their reply within this period, the adjudicating authority will be at liberty to proceed in accordance with law.

6. The appeals are allowed by way of remand.

(Dictated and pronounced in the open Court on the 7th day of February, 2008)

(JUSTICE S.N. JHA)
(PRESIDENT)

(A.K. SRIVASTAVA)
MEMBER (TECHNICAL)

Golay