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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/636 /2005 Date 08/07/2008

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

To :
M/S N M NAGPAL (PVT) LTD
260, SECTOR-24, FARIDABAD (HARYANA)

M/S N M NAGPAL (PVT) LTD Appellant
Vs
THE COMMISSIONER OF CUSTOMS, GUJARAT Respondent

I am directed to transmit herewith a certified copy of Final order No.C/159/08-CUS. DATED 17.06.08 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
   THE COMMISSIONER OF CUSTOMS, GUJARAT
   CUSTOMS HOUSE, KANDLA (GUJRAT)
2. Adv. / Consult
   MR.K.L. HANDA, CONSLT.
   H.NO. 689, SECTOR 16, FARIDABAD
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. Office Copy
15. Guard file

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. II
Customs Appeal No. 636 of 2005

[Arising out of the Order-in-Appeal No. (90-KDL) Cus./ Commr (A)/AHD. dated 18/04/2005 passed by The Commissioner of Customs (Appeals), KANDLA (Gujarat).]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri 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? : No

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

M/s N.M. Nagpal (Pvt.) Ltd. — Appellant

Versus

CC, Kandla (Gujarat) — Respondent

Appearance

Shri K.L. Hegde for the appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 17/06/2008.

Final Order No. C/159/08 Dated : 17/6/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the order in appeal passed by the Commissioner (Appeals), whereby the claim of the appellant that the Special Additional Duty of Customs (SAD) which was introduced w.e.f. 02/06/98 is not leviable on the goods, which were cleared prior to the introduction of special additional duty of Customs was rejected.

2. Brief facts of the case are that appellant imported styrene Monomer and filed a bill of entry on 24/04/98. The goods were warehoused and thereafter appellant filed ex-bond bills of entry on 25 to 29/05/98 for clearance of 72 metric tons of imported goods. The bills of entry were assessed and appropriate duty was paid, however, due to problem in transportation, the goods were actually transported from

warehouse on 06/06/98. During this period i.e. after payment of duty on 02/06/98, SAD was introduced and revenue directed the applicant to deposit the SAD before clearance of the goods, the same was deposited. Appellant challenge the imposition of SAD. Against the rejection of the claim of the appellant, the appellant filed appeal before the Tribunal vide order dated 30th July 2002, remanded the matter to the Adjudicating Authority to decide the issue afresh.

3. The present proceedings are in pursuance to the remand order passed by the Tribunal. The appellant relied upon the decision of the Tribunal in the case of **Biecco Lawrie Ltd. vs. Commissioner of Customs, Calcutta** reported in **2002 (139) E.L.T. 193 (Tri. – Kolkata)**. The Commissioner (Appeals) in the impugned order held that the decision of the Tribunal is appealed by the revenue and appeal is pending in the Hon'ble Supreme Court. The contention of appellant is that now Hon'ble Supreme Court dismiss the appeal filed by the Revenue reported as **Commissioner of Customs, Calcutta vs. Biecco Lawrie Ltd.** reported in **2008 (223) E.L.T. 3 (S.C.)**.

4. The contention of appellant is that in the present case, goods were assessed to appropriate duty on filing ex-bond Bill entry prior to introduction of SAD and goods were ordered to be out of charge ~~and~~ prior to the introduction of SAD, therefore, they are not liable to pay the Special Additional Duty of Customs which was introduced thereafter. We find that this issue is now settled by the Hon'ble Supreme Court in the case of CC vs. Biecco Lawrie (Supra). Hon'ble Supreme Court held as under :-

> "20. There is no dispute that where the imported goods are allowed to be warehoused under Section 68 of the Act and are subsequently cleared from the warehouse, the rate as applicable on the date of actual removal of the goods from the warehouse, is applicable. But where the goods are cleared for home consumption under Section 46, the duty payable would be as on the date the goods were cleared for home consumption. In the present case, not only the full duty stood paid by the respondent, but the Customs Officer had also permitted clearance of the same, as is evident from the endorsement made on the back of the bill of entries. As such, the goods cannot be held to be the warehoused goods and the same were allowed to be kept in the warehouse only on account of an application made by

the appellants in terms of the provisions of Section 49 of the Act. The respondents have been clearing the goods from the storage tank as and when required. They were permitted to store the goods in a private warehouse as if it was their own godown. The goods were stored in the IBP storage tank under an agreement entered into by the respondent with IBP and the storage charges were paid by the respondent. Thereafter, the Preventive Officer Charges were discontinued to be levied. Where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of Section 68, the goods removed in smaller lots have to be treated as cleared for home consumption."

5. In view of the above decision, the impugned order is set aside, however, the refund is subject to the principal of unjust enrichment. Appeal is allowed, as indicated above.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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