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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/574-75 /2005 Date 05/08/2008

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

To :
M/S BANWARI AROMAS PVT LTD
311, ALLIED HOUSE 2, OLD ROHTAK ROAD, DELHI

M/S BANWARI AROMAS PVT LTD Appellant

Vs

OFFICE OF THE COMMISSIONER OF CUSTOMS, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/269-70/08 dated 4.7.08 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
   OFFICE OF THE COMMISSIONER OF CUSTOMS, NEW DELHI
   ICD, TKD, NEW DELHI
2. Adv. / Consult
   MR.V K AGGARWAL
   B-82, LAJPAT NAGAR, PART-2, NEW DELHI-110024
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
16. Easy Service Tax online DST com (P) Ltd
    407A ISCON Mall, above Star India Bazar
    Satellite Road Ahmedabad - 15

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/574-75/05

[Arising out of Order No.VIII/ICD/6/Exp/Conversion.887/04-10687 dt.15.4.05 passed by the Commissioner of Customs, New Delhi)

For approval and signature:

Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. 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?	:
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. Banwari Aromas Pvt. Ltd. Appellant

Versus

CC, ICD,TKD, New Delhi Respondent

Appearance

Shri V.K.Agarwal, Adv. for appellant
Sh. Amit Jain, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.KANG, VICE PRESIDENT
Hon'ble Mr. RAKESH KUMAR, MEMBER TECHNICAL

Final
Date of decision: 4.7.08
Order No. C/269-270/08

Per S.S.Kang:

Heard both sides. Common issue is involved, therefore, appeals are being taken up together.

2. The Commissioner by impugned order rejected the request of the appellant for relaxation of provisions of Rule 12(1)(a) of the Customs & Central Excise Duties(Drawback) Rules,1995.

3. The appellant made export of Mentha Oil and filed Free Shipping Bills. Thereafter the appellant made a request to the Commissioner of Customs to grant exemption for observation of provisions of Rule 12(1)(a) of Drawback Rule.

4. We find that as per the provisions of Rule 12(1)(a) of Drawback Rules, the exporter at the time of export has to give description of the goods, quantity and such other particular which are necessary for deciding whether the goods are entitled to drawback and make a declaration on the relevant shipping bills. The rule further provides that if the Commissioner of Customs is satisfied, the exporter has for his reasons beyond his control, failed to comply with the provisions of this clause, he may, after considering the representation, if any, made by such exporter and for reasons to be recorded, exempts such exporter from provision of this clause.

5. The only contention of the appellant is that before passing the impugned orders, no opportunity of hearing to explain the reasons for not making the claim under drawback at the time of export has been granted to the appellant. Therefore, the impugned order is passed in violation to the principle of natural justice.

6. The contention of the revenue is that while making the request for relaxation of the provisions of Rule, the exporter has to explain reasons and circumstances for not filing drawback shipping bills at the time of exportation. In the present case, no such reasons are explained, therefore, the request has rightly rejected.

7. We find that in this case the request for relaxation of the provisions of Rule 12(1)(a) of Customs & Central Excise Drawback Rules was ~~rejecting~~ without affording an opportunity of hearing to the appellant. In these circumstances, the impugned order is set aside and the matter is remanded to the jurisdictional Commissioner of Customs to decide afresh the request made by the appellant after affording an opportunity of hearing to the appellant.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member (Technical)