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

Appeal No. C/561 /2008 – SM[BR] Date 29/10/2008

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

To :
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW DELHI 110037.

C.C. NEW DELHI (IMPORT & GENERAL) Appellant
Vs
M/S OBERTHUR CARD SYSTEMS PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of Final order No. 1391 / 2008 - SM[BR] dated 19.9.2008 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S OBERTHUR CARD SYSTEMS PVT. LTD.
A-201, SECTOR-63,NOIDA-201303 (U.P.)
2. Adv. / Consult SHRI MOHAN LAL ADV.
B-67, FLATTED FACTORIES COMPLEX OKHL PHASE –III
NEW DELHI -110020

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

E/Appeal No.561/2008 -SM

(Arising out of order in appeal No.CC(A)Cus/I&G/D/1/191/08 dated 30.4.08 passed by the Commissioner of Central Excise (Appeals), New Delhi)

For approval and signature:
Hon'ble Mr.P.K. Das, Member(Judicial))

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(I&G), New Delhi — Appellant
(Rep. by Shri R.K. Verma, DR)

Vs

M/s Oberthur Card Systems Pvt Ltd — Respondent
(Rep. by Shri Mohan Lal, Advocate)
Shri R.K. Tiwari, Advocate

Coram: Hon'ble Mr P.K. Das, Member(Judicial)

Date of Hearing:19.9.08

Final Order No. 1391 /2008-SM(BR)

Per P.K. Das:

The relevant facts of the case, in brief, are that the appellants filed Bill of Entry for clearance of Modules parts for Sim cards. They wrongly declared value of goods in GBP instead of USD as mentioned in the commercial invoice and paid duty accordingly. Subsequently, the appellants detected the mistake and filed refund claim on the basis of calculation of USD. The Adjudicating Authority rejected the refund claim on the ground that the appellants have not challenged the Bill of Entry. The Commissioner (Appeals) allowed the refund claim subject to verification under unjust enrichment.

2. After hearing both the sides and on perusal of the record, I find that there is no dispute that the invoice value was declared in USD. In the Bill of Entry, they declared the value in GBP by mistake. It is a clear case of mistake due to oversight of the value declared in the invoice. The Commissioner (Appeals) allowed the refund claim following the decision of the Tribunal in the case of Aditya Birla Nuvo Limited reported in 2008 (222) ELT 249 (Tri. Bang). In the case of CC(Import), Mumbai Vs Nicolas Piramal India Ltd reported in 2008 (225) ELT 99 (Tri.-Mum), the Tribunal held that limitation period provided under Section 27 of Customs Act, 1962 is not applicable to refund arising out of correction of clerical or arithmetical error. It is seen that the mistake in the present case is in clerical nature which can be rectified. So, the refund arising out of correction of USD instead of GBP in the Bill of Entry is admissible without filing appeal against the Bill of Entry. So, I do not find infirmity in the order of the Commissioner (Appeals). The appeal filed by the Revenue is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*