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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/423 /2008-SM[BR] Date 11/08/2008

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 WESTFALIA SEPARATOR INDIA PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1126 / 2008 –SM[BR] dated 26.6.2008

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 WESTFALIA SEPARATOR INDIA PVT. LTD.

   201, COMPETENT HOUSE-7,
   NANGAL RAYA BUSINESS CENTRE,
   NEW DELHI.

2. Adv. / Consult SHRI R.K.TEWARI ADV.
   B-67, FLATTED FACTORY COMPLEX, OKHLA 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 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. N
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
15. Office Copy
16. Guard file

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

C/Appeal No. 423/08-SM

(Arising out of order in appeal No.CC(A)Cus/I&G/D.1/128/08 dated 27.2.08 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?

N.

CC, New Delhi — Appellant (Rep. by Shri B.S. Suhag, DR)

Vs

M/s Westfalia Separator India (P) Ltd — Respondent (Rep. by Shri A.K. Tiwari, Advocate)

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

Date of Hearing: 26.6.08

Final Order No. 1126 /2008-SM(BR)

Per P.K. Das:

The Revenue filed this Appeal against the order of the Commissioner (Appeals) whereby confiscation of goods, imposition of redemption fine and penalty were set aside.

2. The Adjudicating Authority confiscated the goods on the ground of mis-declaration in respect of value, indicated in the Bill of Entry and imposed redemption fine of Rs. 45,000/- and penalty of Rs.25,000/-. The Commissioner (Appeals) set aside the Adjudication order. Hence the Revenue filed this appeal.

3. After hearing both the sides and on perusal of the record, it is seen that the respondents filed bill of entry for clearance of parts of Separator alongwith invoice dated 22.3.07 to their CHA. Bill of Entry was assessed under R.M.S. Thereafter, the respondent was informed by the supplier that they have given wrong invoice and therefore, the respondents immediately applied for amendment of bill of entry on the basis of correct invoice number.

4. It is seen that the respondents detected the mistakes and requested for amendment of Bill of Entry. So, the allegation of mis-declaration of bill of entry in respect of value, quantity in the invoice by the Adjudicating Authority is not sustainable. I find that the Commissioner (Appeals) accepted the request for amendment of bill of entry under Section 149 of the Customs Act, 1962. Therefore, confiscation of goods, imposition of redemption fine and penalty are not warranted. So, I do not find any merit in the appeal filed by the Revenue. Accordingly, the Appeal is rejected.

(Order dictated and pronounced in the open Court).

(P.K. Das)
Member(Judicial)

MPS*