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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/597 & 601 / 2008 -SM[BR] Date 04/12/2008

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

To :
M/S ARYA ALLOYS PVT. LTD.
B-824, INDUSTRIAL AREA, BHIWADI, DISTT.
ALWAR, RAJASTHAN.

[2] M/S H.V. STEEL CORPRATION
17 , DHARAM MILL ROAD
MANDI GOBINDARH [P.B.]

M/S ARYA ALLOYS PVT. LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. 1577- 1578 / 2008 SM[BR]** dated 6.10.2008 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

C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.

2. Adv. / Consult SHRI H.S. MEW ADV.
52B, UPKAR APPTS
MAYUR VIHAR PHASE EXTN.
DELHI -110091.

[2] SHRI A.K. MISHRA ADV.
B-25, LAJPAT NAGAR -III, 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 - 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

C/Appeal Nos. 597 & 601/2008-SM

(Arising out of order in appeal No. CC(A) C/I/Cus/Icd/D.II/159-160/08 dated 29.4.2008 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?

No

Yes.

1.M/s Arya Alloys Pvt Ltd 2.M/s H.V. Steel Corporation	Appellant (Rep. by Shri H.S. Mew, Advocate) Shri A.K. Mishra, Consultant
Vs	
CC,(ICD), New Delhi	Respondent (Rep. by Shri R.K. Verma, DR)

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

Date of Hearing: 6.10.08

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

Final Order No. 1577 - 1578 / 2008 SM (BR)

Per: P.K. Das

Common issue involved in these appeals and therefore, both are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants imported Lead Scrap through ICD, Tughlakabad under Public Notice dated 16.7.2007 issued by DGFT. The said goods were allowed to be imported at ICD, Loni, Ghazibad instead of ICD, Tughlakabad. The appellants imported the goods on 8th August, 2007. The Adjudicating Authority confiscated the goods and imposed redemption fine and penalty.

3. After hearing both the sides and on perusal of the record, it is seen that the DGFT issued clarification by letter dated 29th August, 2007 clarifying that the imported goods would be allowed to be cleared upto 31.8.2007 through ICD, Tughlakabad. The learned Advocate submits that the CBEC issued circular dated 07.9.2007. He submits that the circular was placed not before the adjudicating authority.

4. The learned joint CDR submits that the Commissioner (Appeals) has already considered the Board Circular. He submits that the goods were cleared before issuing the Board Circular and therefore the adjudicating authority rightly confiscated the goods.

5. I find that there is no dispute the goods were imported prior to 31.8.2007 and the appellants are eligible to get the benefit of the clarification of D.G.P.T. and Board Circular dated 07.9.2007. The learned Advocate submits that on the identical issue, the Tribunal in other cases, remanded the matter to the adjudicating authority to decide afresh, as under:-

(a) Cartoon Sanitation Vs. CC(ICD) New Delhi
Final Order No. 107-109/08-SM(BR) dated 14.1.2008

(b) M/s Shri Shyam Metals (India) Vs. CC(ICD) New Delhi
Final Order No. 1311/08-SM(BR) dated 8.9.2008

6. In view of the above discussion and respectfully following the decisions of the Tribunal, the impugned orders are setaside and the matters are remanded back to the original authority to decide afresh after considering the D.G.F.T. letter and Board Circular. Needless to say, the adjudicating authority will give proper opportunity of hearing to the

appellants before deciding the matter. Both the appeals are allowed by way of remand.

(Dictated and pronounced in the open court).

(P.K. Das)
Member (Judicial)

MPS