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

Date 26/05/2009

Appeal No. E/6264/2004 - EX[DB]

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

To :
M/S VIKAS WSP LTD.
F-88-89 & 58-241, UDYOG VIHAR, SHRI
GANGANAGAR, RAJASTHAN
M/S VIKAS WSP LTD.

Appellant
Vs
Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of **Final order No**. 383/2009-EX **EX[DB]** dated 14-5-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. JAIPUR I
   N.C.R.BUILDING, STATUE CIRCLE, "C" SCHEME, JAIPUR 302005.
2. Adv. / Consult
   MR.V.LAKSHMI KUMARAN
   B-6/10, SAFDARJUNG ENCLAVE, NEW DELHI-110029

3 C.D.R
~~4 J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 Director Publications, Customs, Excise, I.P. Estate, New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file
18. HON'BLE PRESIDENT.

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 6264 /2004- Ex(BR)

[Arising out of Order-in-Appeal No. 324(MPM)CE/JPR-I/2004 dated 28.9.2004 passed by Commissioner (Appeals I) Customs & Central Excise, Jaipur.]

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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?	:	Yes
2. Whether it should 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?	:	Seen
4. Whether Order is to be circulated to the Departmental authorities?	:	No

M/s. Vikas WSP Ltd. — Appellant

Vs.

Commissioner of Central Excise
Jaipur I — Respondent

Appearance:

Shri R.K. Hasija, Advocate for the Appellant
Mr. Virender Choudhary, SDR for the Respondent

CORAM:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

Date of Hearing/decision : 14.5.2009

Final **ORAL ORDER NO. 383/09-EX**

Per Shri Justice R.M.S. Khandeparkar (for the Bench):

Heard the learned advocate for the appellant and learned DR for the respondent. The learned Advocate for the appellant has candidly conceded that the two points which arise in the matter in hand have been fully dealt with and answered against the case pleaded by the appellant herein.

2. Indeed perusal of the records disclose as rightly submitted by the learned advocate for the appellant that the two points for consideration which arise in the matter in hand are (1) Whether the goods which are cleared from 100% EOU clandestinely and without any permission are eligible for exemption under notification No. 125/84-CE dated 26.5.84 ? (2) Whether such goods are to be assessed under the provisions of main Section 3(1) of the Central Excise Act or under the proviso to section 3 of the Central Excise Act ?

3. In fact similar issues arose in Jaipur Golden Transport Co. Pvt. Ltd. vs. CCE, Surat reported in [2007 (215) ELT 503 (Tri-LB)] and considering the difference in opinion between various decisions on the similar points, particularly one in Modern Denim Ltd. vs. CCE Ahmedabad reported in [2005 (191) ELT 1174] and in another case in the matter of Sterlite Optical Technologies Ltd. vs. CCE Aurangabad reported in [2005 (188) ELT 210] the matter was referred to Larger Bench and in the said decision of the Larger Bench both the issues were answered against the assessee while holding that in any case goods cleared by 100% EOU and sold in India with

permission of Development Commissioner shall be made under proviso to section 3(1) of Central Excise Act, 1944 and exemption notification No. 125/84-CE shall not be applicable.

4. In the case in hand, only distinguishing factor which is brought to our notice is that after the goods were removed, while the same were in transit, they were stolen. However, the same would not in any way change the situation as far as the liability to pay the duty is concerned, or mode of assessment in relation to the goods. Being so, the matter in hand is fully covered by the decision of the Larger Bench in Jaipur Golden Transport and therefore, the appeal is accordingly, liable to be dismissed and is hereby dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member(Technical)

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