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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/36 /2009 – SM[BR] Date 20/05/2009

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

To :
M/S SUPER CASSETTES INDUSTRIES LTD.
C-5, PHASE-II, NOIDA, DISTT. GAUTAMBUDH NAGAR, (U.P.)

M/S SUPER CASSETTES INDUSTRIES LTD. Appellant
Vs
C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 434 / 2009-SM[BR] dated 1.5.2009 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
MR.PRABHAT KUMAR
B-51(BASEMENT)SARVODAYA ENCLAVE NEAR MOTHER INTERNATIONAL SCHOOL NEW DELHI
3 S.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)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

CUSTOMS APPEAL NO. 36 OF 2009-SM

[Arising out of common Order-in-Appeal No. CC(A)/Cus/ICD/471/2008 dated 17.112008passed by the Commissioner of Customs(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 would 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?	
4.	Whether order is to be circulated to the Departmental authorities?	Y-v)

M/s. Super Cassettes Inds. Ltd., Appellants

Vs.

C.C., New Delhi Respondent

Appearance:

Shri Prabhat Kumar, Advocate for the appellants;
Shri R.K. Verma, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 1st May, 2009

FINAL ORDER NO. 434/09-SM (BR) **dated** 1.5.09

Per P.K. Das:

Heard both sides.

2. In this case the appellants filed refund claim of Rs. 1,63,164/- on short shipment of imported goods. The impugned order was passed on the basis of remand order dated 30th June, 2008 passed by the Tribunal as under:-

"The Commissioner (Appeals) observed that the shortage of goods was detected at the appellant premises and they have not submitted any certificate/verification report from the jurisdictional Central Excise authority. The ld. Advocate submits that the appellant had not availed Cenvat Credit on the shortage of goods. He further submits that there are several evidences namely Air Way bill, packing lists, correspondence lists foreign suppliers, payments documents etc. are indicating the shortage of goods. He further submits that the appellant would like to produce the certificate from the Central Excise authorities as they have not availed Cenvat Credit of shortage of goods. He also submits that no opportunity was given to produce the records.

2.In view of the above submissions, I find that the appellant should be given opportunity to produce the evidences before the authorities to substantiate the shortage of goods to meet the end of justice. Accordingly, the impugned order is set aside and the matter is remanded back to the Commissioner (Appeals) to decide afresh after considering the evidences as placed by the appellant."

3. In the de novo proceedings, the Commissioner (Appeals) rejected the appeal with observation that the certificate issued by the Suptd. certifies only the amount of Cenvat Credit was not availed in RG-23A, Part-II register against the relevant Bill of Entry. There is no mention in the impugned order that the appellants submitted the evidences before the Commissioner (Appeals). On an query from the Bench the learned Advocate submits that Shri G.C. Agarwal, Consultant, who is also present today, appeared before the Commissioner (Appeals) during hearing and submitted all the documents which were not considered in the impugned order. Learned Advocate also relied upon the following decisions:-

(1) C.C., Chennai vs. Ferro Alloys Corporation, reported in 2000 (119) ELT 432 (Tribunal);

(2) C.C., Bangalore vs. Kennametal Widia India Ltd., reported in 2007 (213) ELT 353 (Tri.-Bang.);

(3) C.C. (Import), Nhava Sheva vs. Motor Industries Co. Ltd., reported in 2008 (225) ELT 235 (Tri.-Mumbai)

4. After hearing both sides, I find that the Tribunal vide order dated 30th June, 2008 directed the Commissioner (Appeals) to decide the matter after considering the evidences in respect of shortage of goods. It appears that the evidences placed by the appellants were not considered properly. Hence, I find that the appellants should be given another opportunity to produce the evidence before the Commissioner (Appeals).

Hence, the impugned order is set aside and the matter is sent back to the Commissioner (Appeals) to decide the same after considering the evidences and case law placed before him by the appellants. Appeal is allowed by way of remand.

(Dictated & pronounced in the Open Court.)

(P.K. DAS)
MEMBER (JUDICIAL)

RK