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

Appeal No. C/283 /2006 – CU [DB] WITH C/CROSS/126 & 135/2006 Date 13/01/2009

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

To :
COMMISSIONER OF CUSTOMS,
NCRB, STATUE CIRCLE, JAIPUR

COMMISSIONER OF CUSTOMS, JAIPUR Appellant

Vs

M/S CONTINENTAL EXPORTS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/12/09-CUS. DATED 07.01.2009

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent M/S CONTINENTAL EXPORTS,
947, MISHRA BHAWAN, SMS HIGHWAY,
CHAURA RASTA, JAIPUR

2. Adv. / Consult
MR.G.K.RANA,
4-K-40, JAWAHAR NAGAR,JAIPUR.

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-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 283 of 2006
Customs Cross Objection No. 126 & 135 of 2006

[Arising out of Order-in-Appeal No. 7 & 8/Cus/JPR-I/2006 dated 30.1.06. passed by Commissioner of Customs & Central Excise , Jaipur]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : NO
2. Whether it should be released under Rule 27: of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? Yes
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? : Yes

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Commissioner of Customs Jaipur	Appellants
Vs.	
M/s. Continental Exports M/s. Indo Kiseki Co. Ltd.	Respondent

AND

M/s. Continental Exports M/s. Indo Kiseki Co. Ltd.	Appellant
Vs.	
Commissioner of Customs Jaipur	Respondent

Appearance:

Mr. Vijay Kumar, SDR for the Respondent
Mr. Jitendra Kumar, Advocate for the Appellants

CORAM:

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

Date of Hearing /Decision: 7.1.2009

Final **ORDER NO. C/12/09**

Per M. Veeraiyan (for the Bench):

1.1 The appeal No C/283/06 is by the Department against the order of the Commissioner (Appeals) No. 7 & 8/Cus/JPR-I/2006 dated 30.1.06.

1.2 The cross objection CO/ 126/06 is by M/s. Continental Exports and CO/135/06 is by M/s. Indo Kiseki Co. Ltd. and they are connected to the above appeal.

2. Heard both sides.

3. According to the submissions of learned DR, the Japanese firm, M/s. Indo Kiseki Co. controlled by Shri S.K. Gupta despatched on 13-12-03 a post parcel to his son at Jaipur, Shri Ram Sharan Gupta, proprietor to M/s. Continental Export declaring the goods as sample (stone) having no commercial value and declaring the value US $ 20 for customs purposes. The said consignment was received in the foreign post office in Jaipur on 19.12.03. On the same day, D-call notice was issued by Customs Authorities to Continental Exports to appear before them to enable examination of the post parcel and the said notice was received by them on 25.12.03. It is claimed by the Department on 3.1.04, they received specific information that the said parcel contained Diamonds and semi-precious stones. The respondent M/s. Continental Exports sent letters to customs authorities on 2.1.2004 and 7.1.04 claiming that M/s. Indo Kiseki Co. Japan has by mistake sent the consignment meant for a Hong Kong party to

Continental Exports, India and sought permission to return the consignment back to M/s. Indo Kiseki Co.. This request was not acceded to and the consignment was subject to detailed examination on 12.1.04 and it was found to contain 23 packets of neatly packed cut and polished diamonds weighing 642.35 carats and another packet of 850 gms of rough garnets. The value was arrived at as Rs.13.68 lakhs. However, further examination by a team of four experts was undertaken on 3.3.04 and the value ascertained by the experts was ranging from Rs.16.25 lakhs to 17.24 lakhs and the Customs adopted the value as 17.24 lakhs.

3.2. On the basis of show cause notice issued to Continental Exports, the original authority ordered confiscation of the diamonds and allowed the same to be redeemed on payment of redemption fine of Rs.25 lakhs; he ordered confiscation of garnets and allowed the same to be redeemed on payment of fine of Rs.1000/-; he also imposed penalty of Rs.5 lakhs on M/s. Continental Exports. The request for re-export has been rejected.

3.3 Against the order of the original authority, appeal was filed not only by M/s. Continental Exports but also by Japan based consignor M/s. Indo Kiseki Co. Ltd. The Commissioner has entertained the appeal of the consignor as well and set aside the order of the original authority and permitted re-export of the consignment to the consignor, M/s. Indo Kiseki Co. Japan.

4. Learned DR submitted the father is the consignor and the son, is the consignee and the said relationship came to light only on investigation. He also raised an objection about permitting re-export to M/s. Indo Kiseki Co., the consignor by the Commissioner (Appeals though the said was not issued

with show cause notice and that they have not participated in the proceeding before the original authority. He also raised other issues.

5. Learned advocate for the respondents defended the order of the Commissioner (Appeals) and submitted that it was basically a case where a consignment has been mis-sent by Japan party to India instead of sending to a Hong Kong party. He also submitted that the representation made by the consignor to the Commissioner has not been considered by the original authority.

6. We have considered the submissions from both sides. We notice that the Commissioner (Appeals) had entertained the appeal of M/s. Indo Kiseki Co. Japan, even though he was not a party to the proceeding before the original authority as no show cause notice was issued to them. Even if the Commissioner (Appeals) felt that the party had locus standi to file the appeal before him, it would have been appropriate that the Commissioner (Appeals) remanded the matter to the original authority to consider their claim taking into account all their submissions on facts. In view of this, we deem it appropriate to set aside the order of the Commissioner as well as order of the original authority and remit the matter for fresh consideration by the original authority. It is open to the consignor M/s. Indo Kiseki Co. Ltd. to make representation with relevant facts on their claim before the original authority. Original authority shall pass the order afresh in accordance with the law after granting reasonable opportunity of hearing to both the parties.

7. We clarify that we have not gone into merits of the case and there fore we have not made any comments on the merits of the case. All issues are kept open before the original authority.

8. The appeal is allowed by way of remand on the above terms. The cross objections are also disposed of on the above terms.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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