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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/269 /2006,293 /2006-294 /2006 - CU[DB] Date 15/01/2009

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

To :
M/S KESHWARI INTERNAITONAL
C-448/3, GALI NO 20, BHAJAN PURA, DELHI.

M/S KESHWARI INTERNAITONAL Appellant
Vs
THE COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/14-16/09-CUS. DATED 30.12.2008 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
   THE COMMISSIONER OF CUSTOMS
   THE MALL, AMRITSAR
2. Adv. / Consult MR.H.S.MEW, ADV.,
   52 B, UPKAR APPTS, MAYUR VIHAR
   PHASE EXTN, DELHI-91
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 & SERVICE TAX APPELLATE TRIBUNAL,
## WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

**CUSTOMS APPEALS NOS. 269, 293 & 294 of 2006**

[Arising out of common Order-in-Appeal No.13-15/CUS/JAL/2005 dated 31.01.2006 passed by the Commissioner of Customs (Appeals), Chandigarh]

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical);
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? | No |
| 2. | Whether it would 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? | Yes |

M/s. Keshwari International, Delhi — Appellants
(Rep. by Shri H.S. Mew, Advocate )
Vs.

Commissioner of Customs, Amritsar — Respondent
(Rep. by Shri V. Kumar, DR)

**Coram:**

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

**Date of Hearing/decision: 30th December, 2008**

**FINAL ORDER NO.** C/14-16/09 **dated** -

**Per P.K. DAS:**

All the appeals are arising out of a common order and, therefore, they are being taken up together for disposal.

2. The relevant facts of the case, in brief, are that the appellants imported Raisin Green vide three Bills of Entry all dated 13.05.2003 without availing benefit of exemption Notification No.76/2003 dated 13.05.2003. So, they filed refund claim, which was sanctioned on 10.12.2003. A cheque was handed over to them on 12.12.2003. A show cause notice was issued on 21.05.2004 proposing to recover amount erroneously paid to them. It has been alleged that the appellant failed to establish that the incidence of duty had not been passed to any other person. The Adjudicating Authority confirmed the demand of duty along with interest. Commissioner (Appeals) upheld the Adjudication Order.

3. Ld. Advocate on behalf of the appellant submits that the show cause notice dated 21.05.2004 is barred by limitation as notice was served on CHA on 30.07.2004. He submits that cheque was issued on 12.12.2003 and notice was issued beyond six months and it is hit by limitation under Section 28 of the Customs Act, 1965. He relied upon the decision of the Larger Bench of the Tribunal in the case of Margra Industries Ltd. Vs. Collector of Customs, New Delhi – 2006 (202) ELT 244 (Tribunal-LB). He also submits that they

have produced several documents to establish that the incidence of duty has not been passed on to the customers.

4. Ld. DR reiterates the findings of ~~order of~~ the Commissioner (Appeals). He submits that it is apparent from the order of the Commissioner (Appeals) that the show cause notice was returned back by the Postal Authorities as 'unclaimed". He further submits that the appellant failed to submit any evidence to establish that the incidence of duty has not been passed on to any other person. It is clearly hit by principals of unjust enrichment.

5. After hearing both the sides and on perusal of the records, we find that the Commissioner (Appeals) had given detailed finding on the issue as to whether show cause notice is barred by limitation. The relevant portion of the impugned order is reproduced below:-

> " It has been contended by the appellants that the demand of show cause notice was barred by limitations and the same has not been served on the appellants within stipulated time of six months. It is observed that in the cases involved in present proceedings, three show cause notices were issued to the appellants vide C.No.VIII-48(16)ARD/REFD/03/548-49 dated 21.05.2004, C.No.VIII-48(14)ARD/REFD/03/544-545 dated 21.05.2004 and C.No.VIII-48(15)ARD/REFD/03/546-47 dated 21.05.2004 for recovery of erroneously sanctioned and paid refund amounts of Rs.2,45,781/-, Rs.2,45,781/- and Rs.2,60,539/- respectively. In view of the above contention of the appellants, the factual position regarding service of above cited show cause notices was ascertained from Asstt.

Commissioner of Customs, Land Customs Station, Attari Road, Amritsar who vide his office letter C.No.VIII-48(16)ARD/Refund/03/544-545 dated 21.05.2004 was sent to the appellants vide registered letter receipt no.1195 dated 22.05.2004 on address M/s. Keshawari International, C-448/3, Gali No.20, Bhajanpura, Delhi and the same was received with postal remarks "unclaimed". Thereafter, same was again posted vide postal receipt no.1259 dated 05.06.2004 on a new address furnished by the CHA as M/s. Keshwari International, 1081/1, Gandhi Gate, Fatehpur, Delhi-6. But the same was again received undelivered on 3.7.2004. The show cause notice C.No.VIII-48(16)ARD/Refund/03/548-549 dated 21.05.2004 was sent to the appellants vide registered letter receipt no.1261 dated 5.6.2004 on address M/s. Keshawari International, 1081/1, Gandhi Gate, Fatehpur, Delhi-6. The same was received with postal remarks "unclaimed". The show cause notice C.No.VIII-48(15) ARD/Refund/03/546-47 dated 21.05.2004 was sent to the appellants vide registered letter receipt no.1260 dated 5.6.2004 on address M/s. Keshwari International, 1081/1, Gandhi Gate, Fatehpur, Delhi-6. The same was received with postal remarks "unclaimed". Thereafter, the attested copies of above mentioned show cause notices was received by M/s. Avtar Singh & Co. the Customs House Agent of the appellants on 26.07.2004. The CHA also submitted a receipt from the appellants on its letter head dated 30.07.2004 as a token of having received show cause notices issued under C.No.VIII-48(14)ARD/Refund /03/544-45 dated 21.05.2004 and C.No.VIII-48(16)ARD/Refund/03/548-549 dated 21.05.2004 on 29.07.2004. From the above report of jurisdictional Asstt. Commissioner of Customs, Land Customs Station, Attari Road, Amritsar, I find that in these cases show cause notices were issued and sent to the appellants by registered post well within the stipulated period of six months prescribed under Section 28 of Customs Act, 1962 but the same were received back as "unclaimed".

6. We find that show cause notice dated 21.05.2004 was delivered by registered post on 22.05.2004 on the address of the appellant as mentioned in the Bill of Entry, which was returned back with postal remarks "unclaimed". The Larger Bench of the Tribunal in the case of Margra Industries Ltd. (supra) held that dispatch of adjudication order by speed post/registered post would not amount to a valid service in the absence of proof of actual delivery of speed post. In the present case, we find that the show cause notice was dispatched by registered post, which was returned by the postal remarks "unclaimed". The notice was issued on the address as recorded in the Bill of Entry. Therefore, it is valid service of the show cause notice. The contention of the ld. Advocate that the demand is barred by limitation is not acceptable.

7. However, we find that the appellant could not produce the documents to establish that the incidence of duty has not been passed on to any other person. The ld. Advocate fairly submits that the appellant produced some invoices and they may be given an opportunity to produce all the records. As such, we remand this matter to the Adjudicating Authority to examine the

documents in support of the contention of the appellant that the incidence of duty has not been passed on to any other person. The appeal is allowed by way of remand to consider the issue of unjust enrichment only.

Order dictated & pronounced in open court on 30.12.2008.

( M. Veeraiyan )
Member (Technical)

( P.K. Das )
Member (Judicial)

Ckp.