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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/890 /2005 - CU[DB] Date 20/01/2009

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

To :
THE COMMISSIONER, CUSTOMS & CENTRAL
EXCISE, P.B.NO.10, MANIK BAGH PALACE,
INDORE-452001

THE COMMISSIONER, CUSTOMS & CENTRAL EXCISE, INDORE — Appellant

Vs

M/S NEO SACK LTD,(EXPORT DIVISION) — Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/20 2009 CU[DB]** dated 13.01.09

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 NEO SACK LTD,(EXPORT DIVISION)

PLOT NO.3, SECTOR-I, INDUSTRIAL AREA, PITHAMPUR

2. Adv. / Consult ATUL GUPTA, CA,
B-1/1289A, VASANT KUNJ,
NEW DELHI – 70.

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

COURT – III

CUSTOMS APPEAL NO. 890 OF 2005

[Arising out of Order-in-Appeal No. IND-I/242/2005 dated 29.07.2005 passed by the Commissioner (Appeals-I), Customs & Central Excise, Indore]

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?	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

Commissioner,
Customs & Central Excise, Indore — Appellant

Vs.

M/s. Neo Sack Ltd. — Respondent

Appearance:

Shri S. Chand, Departmental Representative, for the Revenue,
Shri Atul Gupta, C.S. for the respondent

Coram:

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

Date of Hearing/decision: 13th January, 2009

FINAL ORDER NO. O/20/09 **dated** ______

Per M. VEERAIYAN:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. IND-I/242/2005 dated 29.07.2005.

2. Heard both sides.

3. The facts of the case, in brief, are that:

(a) The respondent exported a consignment which was re-imported and Bill of Entry No. 68 dated 17.1.2003 was filed claiming exemption applicable to re-imported goods in terms of notification No. 158/95-Cus dated 14.11.95.

(b) The goods were allowed clearance after provisional assessment. An amount of Rs. 6,24,541/- was demanded based on final assessment of Bill of Entry dated 17.1/2003 which was contested by the respondent on the ground that the said goods have been re-exported vide Shipping Bill No. 657 dated 3.2.2004.

(c) There was a request for permitting extension of time for exporting beyond the prescribed period of 6 months from the date of import which had been rejected by the Commissioner.

(d) In relation to demand of duty on finalization, when the matter went before the Commissioner (Appeals) he, vide his order dated 16.3.2005, held that there could not be any demand in respect of goods imported vide Bill of Entry No. 68 dated 17.1.2003 even though re-exportation has taken place beyond the stipulated period of 6 months. However, he gave liberty to consider other action as deemed fit.

(e) In pursuance of the observation in the said order, a show cause notice dated 11.4.2005 was issued seeking to finalize the assessment and demand duty. The original authority vide his order dated 18.06.2005 confirmed the demand of Rs. 5,01,833/- along with interest.

(f) On appeal against the said order dated 18.6.2005 the Commissioner (Appeals) passed the impugned order with the following findings:-

> "A careful reading of this Order-in-Appeal No. 50/2005 dated 16.03.2005 leaves no doubt that there cannot be any duty demand in respect of the goods imported vide B/E No. 68 dated 17.01.2003, even though the re-export has taken place beyond a period of 6 months but within a period of 1 year from the date of clearance of goods. In view of this position, I have no hesitation in holding that the duty demand confirmed in the impugned order is not sustainable and therefore the same is set aside. When there is no duty to be payable, there cannot be any interest liability on the Appellants."

4. Learned D.R. submits that the Commissioner vide his order dated 16.3.2005, taking into account the submission of the party that no show cause notice was issued before finalization, gave liberty to the department to issue show cause notice. In pursuance of the said direction show cause notice was issued, duty has been confirmed and, therefore,

the observation of the Commissioner that his previous order dated 16.3.2005 did not permit demand of duty is erroneous. Learned D.R. also relied upon the decision of the Hon'ble Supreme Court in the case of CCE, Trichy vs. Rukmani Pakkwell Traders, reported in 2004 (165) ELT 481 (SC) which holds that a notification should be strictly interpreted.

5. Learned Company Secretary reiterates the findings of the Commissioner (Appeals).

6. We have carefully considered the submissions from both sides. It is a peculiar case where the goods have been initially exported, re-imported and, subsequently re-exported. The fact that the re-imported goods have been re-exported is not being disputed. It is also not disputed that the Commissioner has power to extend the time limit for re-exportation beyond 6 months. In none of the orders the reasons which necessitated re-importation and re-exportation is forthcoming. We find that the Commissioner (Appeals) has taken a correct decision by holding that as the goods have already been exported, the question of demanding duty does not arise in spite of the fact that they have re-exported after the stipulated period of 6 months. We are fully convinced with the decision and the reasoning for taking such decision and endorse the same. We do not find any reason to interfere with this order.

7. Appeal is, therefore, rejected.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK