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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/74 /2006 - CU[DB] Date 28/01/2009

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

To :

M/S H N INTERNATIONAL (HUF) GANDHI GALI,
KATRA ISHWAR BHAWAN, KHARI, DELHI 6

M/S H N INTERNATIONAL (HUF) Appellant

Vs

THE COMMISSIONER OF CUSTOMS AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/30/09-CUS. DATED 21.01.2009

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

THE COMMISSIONER OF CUSTOMS AMRITSAR

2. Adv. / Consult MR.H.S.MEW, ADV.,
52 B, UPKAR APPTS, MAYUR VIHAR PHASE-I,
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 74 of 2006

[Arising out of Order-in-Appeal No. 217/Cus/Jal/2005 dated 28.10.2005 passed by Commissioner (Appeals), Customs & Central Excise, Jalandhar]

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?
2. Whether it should 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

No.

M/s. H.N. International (HUF) Appellant

Vs.

Commissioner of Customs Respondent
Amritsar

Appearance:

Mr. H.S. Mew, Advocate for the Appellants
Mr. Vijay Kumar, SDR for the Respondent

<u>CORAM</u>:

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

Date of Hearing /Decision: 21.1.2009

Final **ORDER NO. C/30/09**

Per P.K.Das (for the Bench):

The relevant facts of the case, in brief, are that the appellants imported Pistachio kernel and Almond Kernel from Afghanistan and filed bill of entry No. 426/03 dated 14.5.2003 and claimed benefit of concessional rate of Customs duty in terms of notification No. 76/2003-Cus dated 13.5.2003. The benefit of notification was denied on the ground that Bill of Entry was not with a certificate of origin as per the condition of notification. The appellant filed appeal before the Commissioner (Appeals) against the assessed bill of entry which was rejected.

2. The learned Advocate on behalf of the appellant submits that the appellant filed the certificate of origin with bill of entry which is not in the form prescribed in the notification as the notification was introduced on 13.5.03 and importation was done on 14.5.03. In this connection, the learned Advocate drew the attention of the Bench to the certificate of origin produced before Customs authorities on 14.5.03. He also submits that they have filed the certificate of origin in proper form on 5.7.03 which was not verified by the authorities.

3. The learned DR on behalf of the Revenue reiterates the findings of the Commissioner (Appeals). He submits that

filing of certificate of origin in proper form with bill of entry is mandatory condition of the notification and therefore, they are not eligible for benefit of exemption notification.

4.. After hearing both the sides and on perusal of records, we find that the appellant had submitted the certificate of origin with Bill of Entry which was accepted by the customs authorities. It is noticed that the notification was introduced on 13.5.03 and importation had been done on the very next day and, therefore, the certificate of origin in the proper form as prescribed in notification was submitted on later date, which was not examined by the lower authorities.

5. In view of that, we set aside the impugned order and the matter is remanded back to the original authority to examine the certificate of origin and to decide the matter afresh in accordance with law. Needless to say that the original authority shall give proper opportunity of hearing before decision and pass a speaking order.

(Dictated & Pronounced in the open Court)

(M. Veeraiyan)
Member(Technical)

(P.K.Das)
Member(Judicial)

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