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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/675 /2005, C/M/482/08, C/676/05, C/M/481/08
C/677/05, C/M/480/08, C/678/05, C/M/479/08

Date 10/06/2009

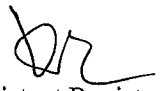
Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S SHERRY INTERNATIONAL
3C/4, NEW ROHTAK ROAD, NEW DELHI
M/S SHERRY INTERNATIONAL

Appellant
Vs
Respondent

THE COMMISSIONER OF CUSTOMS (IMPORT & GENERAL)

I am directed to transmit herewith a certified copy of **Final order No. c/221-224** 2009 CU[DB] dated
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 (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEW DELHI

2. Adv. / Consult

MR.V.P.GOYAL, ADV

106 UNIQUE PLAZA, 16/14 V.E.A. ARYA SAMAJ ROAD, KAROL BAGH, N.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 Publications 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 (Harvana)

16 Office Copy

17 Guard file


Assistant Registrar
(Customs Appeal Branch)

PT-0

18 JOHNY SINGH
3C/4, NEW ROHTAK ROAD, NEW DELHI

19 JOGINDER SINGH
3C/4, NEW ROHTAK ROAD, NEW DELHI

20 M/S MATCHWELL CHEMICAL WORKS
3C/4, NEW ROHTAK ROAD, NEW DELHI

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi**

COURT NO. II

DATE OF HEARING : 04/6/09.

**Customs Appeal No. 675 of 2005 with Misc. Application No. 482
of 2008**

M/s-Sherry International]

**Customs Appeal No. 676 of 2005 with Misc. Application No. 481
of 2008**

M/s Johny Singh] Appellant

**Customs Appeal No. 677 of 2005 with Misc. Application No. 480
of 2008**

M/s Matchwell Chemical Works]

**Customs Appeal No. 678 of 2005 with Misc. Application No. 479
of 2008**

M/s Joginder Singh]

Versus

CC, New Delhi Respondent

Appearance

Shri V.P. Goyal, Advocate – for the appellant.

Shri Vijai Kumar, Authorized Representative (SDR) – for the Respondent.

**CORAM : Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Rakesh Kumar, Technical Member**

Final
Order No. C/221 - 224/09 Dated : _____

ORDER

Per. D.N. Panda :-

Learned Counsel Shri V.P. Goyal express his anxiety that the appellant has been deprived from due process of justice without being heard due to meeting of the accident by the Counsel of the appellant

and also the proprietor was suffering from heart attack. He submits that the appellant has entire set of document to satisfy the authorities below to get justice. They have all negotiation materials which shall speak truth. Those materials are also with the Department. When the appellant could not appear for hearing, all that was relevant for the hearing could not be highlighted before the Authority below.

1.2 - Learned Counsel submits that this appellant has good chance to succeed in adjudication itself before the learned Adjudicating Authority. Therefore, violation of natural justice being not curable at the appellant stage he earnestly prays that the matter may go back to the learned Adjudicating Authority who shall do justice to the appellant. He submits that Apex Court decision in the case of **J.K. Synthetics vs. CC** reported in **1996 (86) E.L.T. 472 (S.C.)** comes to the rescue of the appellant. Hon'ble Supreme Court has held that when appeal is dismissed on account of default of counsel that may be restorable without the matter being decided ex-parte.

2. Learned DR submits that many documents were forged and fabricated. The authorities, therefore had no scope to further wait for the adjudication. He drew our attention to para 13 (thirteen) of the order-in-original which shows the manner of grant of opportunity to the appellant. So also he brings to our notice that learned Commissioner had passed a reasoned and speaking order on the basis of thorough inquiry made for issuance of show cause notice. When the case was found to be under valuation and no document could show ~~that~~ contemporaneous import supports ^{to} case of appellant, they ^{faced} failed such adjudication and the order of adjudication was bound to flow under such situation. He also brings to our notice the manner how the appellant fabricated the document for their advantage. (page 181-82).

3. Heard both the sides and perused the record.

3.1 When the learned Counsel submits that the appellant was deprived of hearing in view of meeting of accident by its counsel and also the proprietor was suffering from heart attack, they deserve consideration for grant of an opportunity to the appellant by a time bound hearing programme. Learned Counsel shall appear on **20th July 2009** before learned Authority for adjudication and submit an application for fixation of hearing. If such an application is submitted, learned Commissioner shall fix a date for hearing of the matter. The appellant shall not seek any adjournment on the date fixed for hearing by the learned Commissioner.

3.2 We expect that the learned Commissioner shall grant a fair and reasonable hearing to the Appellant and pass a reasoned and speaking order considering the submissions of the learned DR made as above today as well as the appellant, evidence that may be lead for defence and citations if any made and do justice to the litigant. In the result, we remand all the four appeals to the learned Commissioner to do justice.

4. In view of the remand of the matter, the miscellaneous applications have become infructuous.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK