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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/185 /2009 - CU[DB] WITH C/S/952/09 Date 30/06/2009

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

To :C.C. LUCKNOW, HALL NO. 3,
5TH AND 11TH FLOOR, KENDRIYA BHAWAN,
SECTOR -H, ALIGANH, LUCKNOW 226024.

C.C. LUCKNOW Appellant

Vs

M/S PRAKASH SYNTHESIS STAY ORDER NO.C/121/09 Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/242/09 2009 CU[DB]** dated 05.06.09

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 PRAKASH SYNTHESIS, E-19,
NAGORI GARDEN, BHILWARA, RAJASTHAN.

2. Adv. / Consult AMIT AWASTHI, ADV.
113/145, SWAROOP NAGAR,
KANPUR – 208 002.

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 Publictions 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
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Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/S/952/09 in C/185/09

(Arising out of Order-in-Appeal No.03-CUS/ALL/09 dt.21.1.09 passed by the Commissioner of Customs, Lucknow)

CC, Lucknow Appellant

Versus

M/s. Prakash Synthetics Respondent

Appearance
Sh. Sunil Kumar, Authorised Departmental Representative(DR)
For Appellant
Sh. Amit Awasthi, Adv. for the Respondent

Coram: Hon'ble Mr. D.N.PANDA, JUDICIAL MEMBER
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of decision: 2.6.09
Order No. C/242/09
Final Stay Order No C/121/09

Per D.N.Panda:

Ld. DR Shri Sunil Kumar submits that Revenue being aggrieved by the order passed by the Ld. Commissioner(Appeals) on 21.1.09 allowing appeal of the respondent, setting aside the order-in-original which had determined the assessable value of the goods at the rate stated as per order dt.14.12.08 has come in appeal before Tribunal. Ld. Commissioner(Appeals) decided the appeal without hearing grievance of revenue. He stated that in para 4 of the ground of appeal of revenue at page 6 of the appeal folder grievance of revenue appears.

Ld. Commissioner accepted pleadings of the respondent and decided the matter in their favour. This is cleare from para 2 of the ground of appeal of revenue at page 6 of appeal folder. Similarly there are other grievance in the grounds of appeal.

2. Ld. Counsel Shri Amit Awasthi very fairly agrees that his client does not prefer to deny natural justice to the Revenue. But when the matter was heard by Ld. Commissioner(Appeals), they did not represent before him. In absence of any material before him, that authority came to the conclusion that respondent was deprived up process of natural justice while determining assessable value. His categorical observation is that there was no show cause notice issued to enable the respondent to defend. Therefore, order of the ld. appellate authority does not call for any interference. Accordingly, both stay application and appeal of revenue should be dismissed.

3. Heard both sides and perused the records.

4. Although this matter was fixed for stay hearing, both sides suggest for disposal of the appeal. Revenue's grievance being violation of natural justice at the first appellate stage, it would be preferable to send the matter back to the ld. Commissioner(Appeals) to afford both parties an opportunity of hearing and pass a reasoned and speaking order. To this proposition, Ld. Counsel for the respondent also agrees. With such amity, we dismiss the stay application of revenue and remand the matter to the Ld. Commissioner(Appeals) who shall hear both sides issuing proper notice granting fair opportunity of hearing. Considering pleading of both sides, evidence that they shall adduce and citations they may make, Ld. Commissioner(Appeals) shall pass a

reasoned and speaking order. While directing so, we make it clear to the respondent that this order having been passed with proposition of both sides, the respondent shall have no grievance in future that it was denied process of natural justice by adjudicating authority in the adjudication. We also make it clear that the Ld. Commissioner(Appeals)' power being co-extensive and co- terminus, he shall do justice to both sides in the remand proceeding. In the result, stay application of Revenue is dismissed and appeal is remanded to the Ld. Commissioner(appeals).

Order dictated in the open Court.

(D.N.Panda)
Judicial Member

(Rakesh Kumar)
Member Technical

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