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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/ 831 /2005 - CU[DB]

Date 20/07/2009

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

To :
THE COMMISSIONER OF CUSTOMS, NEW DELHI
ICD, TKD, NEW DELHI
THE COMMISSIONER OF CUSTOMS, NEW DELHI

M/S CONTINENTAL PROFILES LIMITED

Appellant

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/257/ 2009 CU[DB] dated 09.07.09
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 CONTINENTAL PROFILES LIMITED

PLOT NO. 10, SECTOR 6, MATHURA ROAD, FARIDABAD

2. Adv. / Consult

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, Indrapuram - 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 Kuni, 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)

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Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Appeal No.C/831/2005-Cust.Br.

[Arising out of Order-in-Appeal NO.CC(A)CSP(169-170)D-II/05 dated 17.6.2005 passed by Commissioner of Customs (Appeals) New Delhi].

Date of Hearing:02.07.2009
Date of decision: 02.07.2009

CC, New Delhi.

...Appellant

Vs.

M/s.Continental Profiles Ltd.

... Respondent

Present for the Appellant : Shri. Vijay Kumar, SDR
Shri S.R.Meena, SDR

Present for the Respondent: None

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr. Rakesh Kumar, Technical Member

Final ORDER NO. C/257/09 DATED:02.07.2009

PER: D.N.PANDA

Ld. DR Shri Vijay Kumar & Shri.S.R.Meena, SDR submit that the levy made by order of adjudication was additional customs duty in terms of section 3^(a) of the Customs Tariff Act 1975. But when the *Respondent* approached the Id. Commissioner (Appeals), the said authority converted the levy under section 3^(a) into levy under section 9 of the said Act. Such a conversion is not permissible for which revenue has been aggrieved. They both submit that in order to make a levy under section 9 of the Customs Tariff Act 1975, statutory mandate is that there should be a Notification in respect of concerned goods. In absence of Notification, invoking of section 9

for the present case is ~~un~~conceivable. Therefore, the case is only governed by section 3 of the Customs Tariff Act 1975.

2. None present for the respondent. Having looked into the records and guided by revenue's submission aforesaid, we are not inclined to order for sustaining the first appellate directions. Accordingly, we restore the Order-in-Original allowing the appeal of Revenue setting aside the appellate order.

[Dictated & Pronounced in the open Court].

(D.N.PANDA)
JUDICIAL MEMBER

(RAKESH KUMAR)
TECHNICAL MEMBER

Anita