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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/677 /2009,699 /2009 - CU[DB], C/S/3130, 3189/2009 Date 27/09/2010

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

To :
M/S DHL EXPRESS (I) PVT. LTD.
NEW COURIER TERMINAL, I.G.I AIRPORT COMPLEX,
NEW DELHI.

M/S DHL EXPRESS (I) PVT. LTD. Appellant

Vs

C.C. (EXPORT) NEW DELHI STAY ORDER NO.C/108-109/2010 CU DB Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/135-136/ 2010 CU[DB]** dated 21.09.2010 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
   C.C. (EXPORT) NEW DELHI, AIR CARGO EXPORT,
   NEW CUSTOM HOUSE, NEW DELHI 110037
2. Adv. / Consult
   MR.PRAMOD KUMAR RAI & ATHENA LAW ASSOCIATES,
   808, L&T FLATS, SEC-18-B, DWARKA, NEW DELHI-110075.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
10. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
13. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file
16. M/S MOTHERSON SSUMI SYSTEMS LTD.,
    C-14 A-7B, SECTOR-1, NOIDA.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:20.9.2010

Stay Applications No.3130 & 3189 of 2009 in Customs Appeals No.677 & 699 of 2009

Arising out of the order in appeal No.CC(A)/Cus/EXP/190-191/2009 dated 31.8.2009 passed by the Commissioner of Customs (Appeals), New Delhi.

For Approval and Signature:

Hon'ble Shri M.V. Ravindran, Judicial Member
Hon'ble Shri M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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

1. DHL Express (I) Pvt. Ltd. ... Appellant/applicant
2. Motherson Sumi Systems Ltd.

Vs.

C.C. (Export), New Delhi ... Respondent

Appearance:

Shri P.K.Roy, Advocate and Shri Atul Gupta Advocate for the appellants
Shri Sumi Kumar, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Shri M.V. Ravindran, Judicial Member
Hon'ble Shri M. Veeraiyan, Technical Member

Final Oral Order No C/135-136/10

Per M.V. Ravindran: Stay order No S/108 to 109/10

These two stay petitions are filed by Appellant No.1 M/s DHL Express (I) Pvt. Ltd. and Appellant No.2 M/s Motherson Sumi Systems Ltd. Appellant

No.1 is a courier who has filed stay petition for waiver of pre-deposit of the amount of penalty of Rs.1 lakh imposed on them under Section 112 of the Customs Act, 1962 and a penalty of Rs.20 lakhs imposed on them under Section 114AA of the Customs Act, 1962.

2. M/s Motherson Sumi Sytsems Ltd. has filed stay petition for waiver of pre-deposit of penalty amount of Rs.1,00,000/- imposed on them by the adjudicating authority under Section 112 of the Customs Act, 1962.

3. The issue involved in these cases is regarding the classification of the goods imported by M/s Motherson Sumi Systems Ltd. The issue is whether the said goods would be "Connectors" or "Housing" made of plastics.

4. Heard both sides and perused the records.

5. Shri P.K. Roy, learned Advocate appearing for the appellant No.1 M/s DHL Express India Pvt. Ltd. submits that the entire issue is of mis-declaration against the appellant. M/s DHL Express India Pvt. Ltd. has been declaring the said goods as "connectors" from 2004 onwards and filing bills of entry. On the other hand, Shri Atul Gupta, learned Advocate appearing for M/s Motherson Sumi Systems Ltd. submits that they have accepted the classification as "housing" made of plastics and have paid the duty liability and interest and are in appeal against the penalty amount imposed.

6. Learned DR on the other hand submits that appeal of DHL Express India Pvt. Ltd. has been dismissed by the Commissioner (Appeals) for non-compliance of the pre-deposit made by him. At this juncture, he submits that any point on the merits of the case that need not be gone into at this juncture. As against the appeal filed by M/s Motherson Sumi Systems Ltd. he submits that they have accepted the classification of product as "housing" made of plastics and not "connectors" and the penalty imposed on them is correct.

7. After hearing both sides for some time, we find that the issue involved is in narrow campus and the appeals themselves can be disposed off. Since pre-deposit of the amount of Rs.25,000/- as ordered by the learned Commissioner (Appeals) has been complied with by the appellant No.2, the same is as enough deposit and proceed to hear the appeal filed by M/s Motherson Sumi Systems Ltd.

8. As regards the stay petition filed by M/s DHL Express India Pvt. Ltd. , a courier, we find that the Commissioner (Appeals) has dismissed the appeal for non-compliance. We find that M/s DHL Express India Pvt. Ltd. are not able to prima facie convince us for waiver of the pre-deposit of the amount of penalty. There is nothing on record to show that they have instructed their client for proper classification of the matter. Since the learned Commissioner (Appeals) has not recorded any findings on the merits of the case and has also not given any finding on the plea taken by M/s DHL Express India Pvt. Ltd., a courier regarding application of Section 114AA is only from 13.7.2006, we are constrained to record any finding on the merits of the case. We find that prima facie, M/s DHL Express India Pvt. Ltd. has not made out a case for waiver of the pre-deposit of the amount of penalties. But in the facts and circumstances of the case, more specifically the issue of applicability of Section 114AA to the transactions which were entered prior to 13.7.2006, we find that there is a prima facie legal point, hence we hold that they need be put to some condition for hearing of the appeal. In view of the above, M/s DHL Expression India Pvt. Ltd. is directed to deposit a sum of Rs.2 lakhs (rupees two lakhs only) within fifteen days from today and report compliance to the Commissioner (Appeals) on 8.10.2010. Subject to compliance being reported, we direct the learned Commissioner (Appeals) to decide the appeal of DHL Express India Pvt. Ltd. on merits and also the appeal filed by M/s Motherson Sumi Systems Ltd. and also decide the issue of mis-declaration of the goods, if any , and who is responsible for such mis-declaration and

consequences thereof. Accordingly, both the appeals are allowed by way of remand to the learned Commissioner (Appeals) for deciding the issues as indicated herein above. Needless to say that the learned Commissioner (Appeals) will follow the principles of natural justice before coming to any conclusion.

(M.V. Ravindran)
Judicial Member

(M. Veeraiyan)
Technical Member

scd/