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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/217 /2010 - CU[DB], C/S/1219/2010 Date 27/09/2010

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

To :
M/S. MKU PVT. LTD.

118-E, SHYAM NAGAR, KANPUR (UP)

M/S. MKU PVT. LTD. Appellant

Vs

C.C. (EXPORT) NEW DELHI **STAY ORDER NO.C/111/2010 CU DB** Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/137/ 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

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: **20.9.2010**

Custom Stay No. 1219 of 2010 and Custom Appeal No. 217 of 2010

[Arising out of Order-in-Appeal No. CC(A)/Cus/Exp/32/2010 dated 26.2.2010 passed by the Commissioner of Customs (Appeals), New Delhi]

For approval and signature:

Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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?	

M/s MKU Pvt. Ltd. Appellant

Vs.

CC, Delhi Respondent

Appearance:

Appeared for the Appellant - Shri Pramod Kumar Roy, Advocate
Appeared for the Respondent - Shri S.R. Meena, DR

Coram: Hon'ble Mr. M.V. Ravindran, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical).

Stay order No. C/111/10
Final Order No. C/137/10

Per M.V. Ravindran :

The stay petition has been filed for waiver of pre-deposit of amount of Rs. 3,04,462/- as customs duty along with interest and also against waiver of pre-deposit an amount of penalty of Rs.1.00 lakh.

2. After hearing both sides for some time, we find that the appeal itself cannot be disposed of at this juncture. After waiving the condition of pre-deposit of the amount involved as indicated herein above, the appeal is taken up for disposal.

3. Heard both sides and perused the record.

4. Ld. Counsel submits that the ld. Commissioner (Appeals) has dismissed their appeal for non-compliance of the condition of the pre-deposit order. It is also a submission that the adjudicating authority has not considered the replies filed by them and has also not given an effective personal hearing. It is the submissions that they had sought personal hearing in response to the letter of the Assistant Commissioner's office, Air Cargo (Export).

5. Ld. Departmental Representative would submit that the Commissioner (Appeals) has not passed the order on merit and hence merits cannot be argued by the assesee. As regards, it is the submission that they should be directed to deposit the amount and matter may be remanded back to the ld. Adjudicating authority for hearing.

6. On a careful consideration of the submissions made by both sides and on perusal of the record, we find that the appellant have been able to show us reply filed by them in the office of the Commissioner of Customs, Air Cargo (Export) which shows the receipt of dated 29.5.08. We have also found that vide letter No.

VIII/12/ACU/Gr. VII/TAM/76/08/2108, office of the Assistant Commissioner of Customs had asked the assessee herein to intimate whether they ~~want a the matter of~~ require a personal hearing in the matter on the case such reply on 27th December 2008. The assessee filed reply in affirmative asking for personal hearing. Though, such a affirmation given by the assessee, they did not appear for the hearing before the adjudicating authority. At the same time, we have also found that the adjudicating authority has recorded a finding that the assessee had not replied to show cause notice, which is factually incorrect. In view of this factual incorrection, without expressing any views on the merits of the case, keeping all the issues open, we set aside the impugned order and remit back the matter to the adjudicating authority, who will reconsider the issue afresh after following the principles of natural justice. The appellant is directed that they should appear before the ld. Adjudicating authority as and when called for personal hearing and should not seek any adjournment. Ld. Adjudicating authority is directed, subject to his convenience, to dispose of the matter within three months from the date of this order.

7. Stay petition and appeal is disposed of as indicated above.

(Dictated & pronounced in open Court)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

RM