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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/47 /2010 - CU[DB], C/S/234/2010 Date 01/10/2010

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

To :
M/S INDIA GLYCOLS LTD., PLOT NO. 2-B,
SECTOR-126, NOIDA-201304 (U.P.)
M/S INDIA GLYCOLS LTD. Appellant

Vs

C.C. (ICD) NEW DELHI STAY ORDER NO.C/116/10 -CU DB Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/142/ 2010 CU[DB]** dated 27.09.2010 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. ICD, TUGHLAKABAD,
   NEW DELHI 110020.
2. Adv. / Consult
   MR.V. LAXMIKUMARAN, B-6/10,
   SAFDARJUNG ENCLAVE, NEW DELHI-110029
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/decision: 27.9.2010

Stay Application No.234 of 2010 in
Customs Appeal No.47 of 2010

Arising out of the order in appeal No.CC(A)Cus/ICD/287/2009 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

M/s India Glycols Limited ... Appellant/applicant

Vs.

C.C., ICD, New Delhi ... Respondent

Appearance:

Shri B.L. Narasimhan, Advocate for the appellant/applicant
Shri Sumit Kumar, Authorized Departmental Representative (JDR) for the Revenue

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

Final Oral Order No. C/1142/10 dtd. 27.9.10
Stay order No.C/116/10

Per M.V. Ravindran:

This stay petition is filed for waiver of pre-deposit of the amount of Rs.1,21,32,834/- confirmed by the adjudicating authority ~~of~~ as duty foregone against Advance Licence No.051012566 dated 7.5.04 and towards penalty under Section 112(a)(ii) of the Customs Act, 1962. On appeal by the appellant, the appellant was directed to pre-deposit Rs.65 lakhs failing which the appeal has been dismissed for non-compliance of the order. Hence this appeal before us.

2. The relevant facts that arise for our consideration are that the appellants had imported some inputs under Advance Licence No.0510125266 dated 7.5.04 submitting themselves for fixed export obligation. The adjudicating authority has come to the conclusion that the appellant had not produced any evidence of export obligation and there is violation of condition of the licence. Having come to such conclusion, he confirmed the demand and on an appeal, first appellate authority directed the appellant to pre-deposit an amount, which was not done by the appellants.

3. Learned Counsel for the applicant arguing on the stay petition submits that EODC of the Advance Licence dated 7.5.04 is now produced and submits that the matter may be remanded back to the lower authorities.

4. Learned Departmental Representative on the other hand submits that this evidence was not available before the first appellate authority and the first appellate authority has taken a prima facie view to directing pre-deposit. It is his submission that the appellant may be put to some condition to deposit and the matter may be remanded back to the lower authorities.

5. After hearing both sides on the stay petition, we find that the appeal itself can be disposed of at this juncture. Hence, after allowing the stay petition, and waiving the pre-deposit of the amounts involved, we take up the appeal for disposal.

6. We find from the records that the entire ~~disposal~~ dispute is regarding the export obligation in respect of raw materials imported by the appellant by availing the Advance Licence No. 0510125266 dated 7.5.04. The relied upon letter issued by DGFT is now produced before us. Since the appellant/applicant has not produced the same before the lower appellate authority to show that export obligation is discharged by them, we find that the matter needs reconsideration by the adjudicating authority. We also find that in similar issue, vide Final Order No.C/70/10 dated 19.4.10, we had remanded the matter to the adjudicating authority to reconsider the issue in the light of expert obligation discharge certificate being issued by the competent authority. Respectfully following the same, we set aside the order of the adjudicating authority and remand the matter back to the original authority to reconsider the issue afresh and come to the conclusion after following the principles of natural justice.

7. The stay petition also stands disposed.

(M.V. Ravindran)
Judicial Member

(M. Veeraiyan)
Technical Member

scd/