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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/649 /2008 – SM[BR] Date 08/12/2009

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

To :
SH. SHYAM BAJAJ, PROP.

M/S RICE OVERSEAS,KDA-3, ASHOK VIHAR, PHASE-I, DELHI-110052.
SH. SHYAM BAJAJ, PROP.

Appellant

Vs

C.C.E. LUCKNOW

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1493 / 2009 –SM[BR] dated 2.12.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

   C.C.E. LUCKNOW

   7-A, ASHOK MARG, LUCKNOW.
2. Adv. / Consult

   MR.NAVEEN MULLICK

   B-388, MERA BAGH, NEW DELHI-63.
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
15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 2.12.2009

Customs Appeal No.649 of 2008-SM

Arising out of the order in appeal No.9-11-CUS/MRT-II/2007 dated 27.8.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Meerut II.

For Approval and Signature:

Hon'ble Shri M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	Yes
2	Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
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

Shyam Bajaj (Prop.) ... Appellant

Vs.

C.C.., Lucknow .... Respondent

Appearance:

Shri Naveen Mullick, Advocate for the appellant
Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue

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

Oral Order No. 1493/2009 SM (BR)

Per M. Veeraiyan:

This is an appeal against the order of the Commissioner (Appeals) No. 9-11-CUS/MRT-II/2007 dated 27.8.2007.

2. Heard both sides.

3. The appellants imported consignments of garlic weighing about 30 MTs valued at Rs.4,13,013/-; the import has taken place from Nepal and the same were cleared duty free in terms of Notification No.40/2002-Cus dated

12.4.2002. When the consignments were en route, the same were detained by the officers of DRI and the samples were drawn and sent for test. The report dated 20.10.05 of National Research Centre for Onion and Garlic indicated that the samples were not of the garlics of either Indian or Nepalese origin. The said report also suggested that for considering quality ~~quantity~~ , the same required incubation and pathological test. It is also seen that the matter was taken up with the Directorate of Plant Protection, Quarantine & Storage under the Ministry of Agriculture and the Joint Director vide his report dated 27.10.05 advised "to deport all garlic consignments coming from Nepal to keep in view the test report received from LARI, New Delhi regarding Interception of Embellisia alli (fungus) and filamentous virus from the garlic consignments imported from Nepal to avoid threat of likely spread of these quarantine pests in to India". The original authority vide order dated 14.9.06 ordered for absolute confiscation and destruction of the consignments and also imposed penalty of Rs.2 lakhs on the appellants. On appeal, the Commissioner (Appeals) upheld the order of absolute confiscation and destruction but set aside the penalty imposed on the appellant. The appellant has preferred this appeal and the prayer in the appeal is for setting aside the order of absolute confiscation and ordering refund of the value of the goods which was wrongly seized, confiscated and destroyed without any evidence of illegality involved with it.

4. Learned Advocate for the appellants submits that reports dated 20.10.05 and 27.10.05 do not justify absolute confiscation and destruction of the goods. The advice dated 27.10.05 by Joint Director of Plant Protection, Quarantine & Storage was for deportation. If the deportation was allowed, they would not have been put to loss. Therefore, he seeks order for refund of the value of goods.

5. Learned SDR submits that as the goods were found to possess potential threat for spreading harmful pest in India it was rightly ordered to be confiscated and destroyed and therefore, relief sought for by the appellants may not be allowed.

6. I have carefully gone through the submissions and perused records. The consignments were admittedly imported from Nepal. The report of the competent authority dated 20.10.05 clearly shows that the goods were not of Nepalese ~~or Indian~~ origin. Therefore, there is misdeclaration of the origin of the goods. The report of the Joint Director, Plant Protection, Quarantine & Storage clearly held that the consignment has the danger of spreading harmful pest in India. In such a situation, the order of the original authority in ordering absolute confiscation and destruction of the imported goods under the provisions of Clause 3(16) of Plant, Quarantine (Regulation of Import into India) Order, 2003 cannot be faulted. Therefore, the order of the Commissioner (Appeals) in upholding such absolute confiscation and destruction is legal and proper. Under these circumstances, the question of acceding to the prayer for refund of the value of the goods does not arise. There is no provision for refund of value of the goods which have been imported and ordered to be destroyed in view of the danger of spreading pest in India.

7. In view of the above, the appeal is rejected.

(M. Veeraiyan)
Member (Technical)