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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/197 /2009 – SM[BR]& C / MISC / 789 / 2009 –SM[BR] Date 14/12/2009

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

To :
M/S STAINLESS INDIA LTD.

C-237, MIA, BASNI PHASE - II, JODHPUR,
RAJASTHAN.

M/S STAINLESS INDIA LTD. Appellant

Vs

C.C.(JODHPUR) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1517 /2009 –SM[BR]&M/ 258 /2009 dated 4.12.2009

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.(JODHPUR)

   HQ AT NEW CENTRAL REVENUE BUILDING, STATUE CIRCLE, 'C' SCHEME, JAIPUR 302005.
2. Adv. / Consult

   MR.OM P.AGARWAL & CO.

   56, SECTION 7, N.P.H ROAD, JODHPUR(RAJ)

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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 197 of 2009-SM(BR)
Customs Misc. Application No. 789/09-SM

[Arising out of Order-in-Appeal No. I/DK/CUS/JPR II/2009 dated 29.01.2009 passed by Commissioner (Appeals) Customs & Central Excise, Jaipur]

For approval and signature:

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? : Yes
2. Whether it should be released under Rule 27 of the 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

M/s. Stainless India Ltd. — Appellants

Vs.

Commissioner of Customs Jodhpur — Respondent

Appearance:

Shri O.P. Agarwal, Chartered Accountant for the Appellants
Shri S.N. Srivastava, SDR for the Respondent

Date of Hearing/decision : 4.12.2009

ORAL ORDER NO. 1517/2009 SM(BR) + M-258/2009 SM(BR)

Per M. Veeraiyan:

The Misc. application, is seeking to vary the terms of stay order No. 394/09 dated 21.7.09 in which it has been ordered that the bank guarantee of Rs. One lakh furnished by the appellant would be kept with the revenue till the disposal of appeal. With the consent of both sides, the Misc. application is disposed of and the appeal itself is taken up for final hearing.

2. The relevant facts, in brief, are that the appellants imported heavy melting scrap in six containers and filed bill of entry describing them as ball scrap and plate scrap. They enclosed pre-shipment inspection certificate issued by M/s. Geo Chem of UAE (an international independent inspection and testing company) certifying that the goods in six containers are "SS Magnetic Ball Scrap 400 Series". Subsequently, the said inspection agency had clarified that by oversight they mentioned only the presence of ball scrap and plate scrap was omitted in the certificate. The original authority has categorically held that there is no licensing restriction violated and no mis-declaration of value. Thus there is no duty implication or licensing violation. However, holding that there is mis-declaration of the description in the pre-inspection certificate, he ordered confiscation of the goods and allowed the same on payment of redemption fine of Rs. 1,25,000/- and imposed a penalty of Rs.75,000/-. On appeal, Commissioner (Appeals) reduced to the redemption fine to Rs.75,000/- and penalty to Rs.25,000/-.

3. Vide Stay order No. 21.7.09, on the basis of averments made by the appellants, that bank guarantee of Rs. One lakh given by them which was in force, pre-deposit was waived. The appellants submission in this Misc. application was that actually they had given Bank guarantee for Rs.6 lakhs and the same were in force and they were put to much inconvenience and were seeking release of Bank guarantees.

4. I find that the alleged mis-declaration was not due to the any omission or commission on the part of the appellant, and apparently it was a mistake on the part of third party namely, pre-shipment inspection agency. It is also noticed that mis-declaration, if any, did not result in any evasion or violation of licensing regulation. Under these circumstances, the explanation offered by the Inspection Agency appears acceptable. Therefore, I hold that there is no justification for confiscation of the goods and imposition of penalty on the appellants. In view of the above, the appeal is allowed with consequential relief as per law.

5. The appeal is allowed. Misc. application is also disposed of.

(M. Veeraiyan)
Member(Technical)

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