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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/429 /2011 – SM[BR] WITH C /MISC /484 /2011-SM[BR]** Date **29/07/2011**

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

To :
J R INTERNATIONAL PVT LTD
E-102, SAI BABA APARTMENT, SECTOR-9, ROHINI N DELHI.

J R INTERNATIONAL PVT LTD Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.449/2011-SM[BR]&M/100/2011** dated 22.7.2011 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. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW
DELHI 110020.

2. Adv. / Consult
MR.SATISH PANDEY,ADV
LAWYERS CHAMBER NO 96(OLD) SUPREME COURT OF INDIA, N DELHI

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. IV

Date of Hearing : 22.7.2011

Custom Appeal No. 429 of 2011 with Misc. No. 484 of 2011

[Arising out of Order-in-Original No. 26/2011 dated 7.7.2011 passed by the Commissioner of Customs, New Delhi]

Coram:
Hon'ble Shri Ashok Jindal, Member (Judicial)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

J.R. International Pvt. Ltd. — Appellant

Vs.

CC, New Delhi — Respondent

Appearance:

Appeared for Appellant : Shri Saurav Kirpal & Sh. Satish Pandey, Advocates

Appeared for Respondent : Shri Fateh Singh, DR

Coram:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Final Order No. 449/2011 SM (Br) & M-100/2011 SM (Br) dated............

Per Ashok Jindal :

The appellants are in appeal against the impugned order for imposing certain conditions for provisional release of the goods involved in the impugned Bills of Entry along with the Misc. application for early hearing of the appeal. As the matter has been listed today, therefore, the application for early hearing has become infructuous, hence dismissed.

2. The facts of the case are that on specific information, the DRI detained 13 containers of the appellants for examination and two containers of M/s Vipula Exports. The detained containers have been examined and during the course of examination, it was found that the appellants have mis-declared the value, description and weight of the goods. The said goods were seized for investigation under Customs Act, 1962. During the course of seizure, the appellants moved an application for provisional release of the impugned goods contained in 13 containers as heavy demurrage are being incurred by the appellants. The application for provisional release was considered by the Commissioner and allowed to be released on the following conditions:-

(i) On execution of bond equivalent to the value of seized goods as calculated by the Group based on the inputs provided by Dy. Commissioner (Import) and Dy. Commissioner (SIIB).

(ii) On payment of applicable customs duties as calculated by the Group;

(iii) On execution of Bank Guarantee equivalent to 100% of duty calculated as per Para (ii) to cover fine and penalty;

(iv) On payment of anti-dumping duty as calculated by the Group;

(v) On submission of solvency certificate."

Aggrieved with these conditions, the appellants are before me.

3. Shri Saurav Kirpal, Advocate along with Sh. Satish Pandey, Advocate appeared on behalf of the appellants and submitted that earlier 41 consignments of the appellants were detained by the Custom Authorities and they were allowed for provisional release on the following conditions :-

(i) Execution of bond with solvency certificate for the value of the goods equivalent to Rs.8,49,56,822/- (Rupees Eight Crores Forty Nine Lakhs Fifty Six Thousand Eight Hundered and Twenty Two only) recovering value of the seized goods;

(ii) Payment of duty on enhanced value and anti dumping duty as applicable; and

(iii) On payment of an amount equal to 25% of duty towards penalty, if any, to be imposed at the time of finalisation of case."

4. He submitted that although the conditions imposed were harsher but as they were incurring heavy demurrage, they complied with these

conditions for provisional release of their goods contained in 41 consignments but they are not agree with those conditions also. Therefore, the impugned order be modified with the conditions as levied by Delhi High Court in the case of **Navshakti Industries Pvt. Ltd. Vs. CCE** reported in 2011 (267) ELT 483 (Del.).

5. On the other hand, the ld. DR opposed the contentions of the ld. Advocates and submitted that it is a case of mis-declaration of goods, value and quantity; therefore, the goods have been detained for examination. The revenue is to be secured, as the appellants are habitual offenders. Therefore there may be strict conditions be imposed for release of the goods and supported the Commissioner's order for release of the goods.

6. Heard both sides.

7. After hearing both the sides, I find that in the earlier consignment imported by the appellants, the Commissioner has imposed following conditions:-

(i) Execution of bond with solvency certificate for the value of the goods equivalent to Rs.8,49,56,822/- (Rupees Eight Crores Forty Nine Lakhs Fifty Six Thousand Eight Hundered and Twenty Two only) recovering value of the seized goods;

(ii) Payment of duty on enhanced value and anti dumping duty as applicable; and

(iii) On payment of an amount equal to 25% of duty towards penalty, if any, to be imposed at the time of finalisation of case."

8. Thereafter, in subsequent consignments which were in pipeline, he has putting harsher conditions upon the appellants for the goods in question. Therefore, the Commissioner is required to impose similar conditions for release of the subsequent goods which were in pipeline. The reliance placed by the ld. Advocate in the case of **Navshakti Industries Pvt. Ltd.** (supra) is not applicable to the facts of this case as the offence is to be examined on case to case basis, therefore, I do not rely on the said decision. As for earlier consignment of the appellants, the condition have been imposed for the release of the goods as enumerated hereinabove which are also harsher to the appellants but as the appellants has not contested the same to avoid further detention and demurrage. In the facts and circumstances of the case and to secure the revenue involved, I direct the authority to release the goods contained in 13 containers discussed in the impugned order on the following conditions :-

(a) On execution of bond with solvency certificate for the value of the seized goods under these 13 containers.

(b) Payment of customs duty as well as anti dumping duty as applicable and

(c) On furnishing a bank guarantee of 20% of the duty involved.

9. As regards the submissions of the ld. Advocate that they have already deposit certain amounts towards their past consignment seized in warehoused that amount shall be adjusted against the liability of those warehoused seized goods.

10. On compliance of the above conditions, the concerned authorities shall provisionally release the goods contained in 13 containers within three days in accordance of Cargo Handing Regulations, 2009. Appeal is disposed of accordingly.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

RM