

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Appeal No. E/4107/2010 – SM[BR] E / STAY /3995 /2010-SM[BR]

Date 20/10/2011

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

To :

M/S POLYCON INTERNATIONAL LTD.
UNIT-II, F-97-98, 99 & G-96, INDUSTRIAL AREA,
HEERAWALA, KANOTA, JAIPUR.

M/S POLYCON INTERNATIONAL LTD.

Appellant

Vs

Respondent

C.C.E. JAIPUR I

I am directed to transmit herewith a certified copy of Final order No. 722/2011-SM[BR]&S/643/2011 dated 10.10.2011 passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

C.C.E. JAIPUR I

N.C.R.BUILDING, STATUE
CIRCLE, "C" SCHEME, JAIPUR
302005.

2. Adv. / Consult

MR.BIPIN GARG

B-1/1289,A-VASANT KUNJ, NEW DELHI

3. C.D.R

4. Bar association, CESTAT, New Delhi

5. Director Publications, Customs, Excise. I.P. Estate, New

6. M/s Centax Publications 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 (Harvana)

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.II, R.K. PURAM, NEW DELHI-110066.
BENCH-SM

Excise Stay Application No.E/S/3995/10-SM in
Excise Appeal No.E/4107/10-SM

M/s.Polycon International Ltd. ...Appellant

Vs.

CCE, Jaipur ... Respondent

Present for the Appellant : Shri Bipin Garg, Advocate
Present for the Respondent: Shri. Fateh Singh, DR

Coram: HON'BLE MR. ASHOK JINDAL, JUDICIAL MEMBER

Date of Hearing/Decision: 10.10.2011

final ORDER NO. 722/2011 SM (Br) & DATED:

PER: ASHOK JINDAL

S-643/2011 SM (Br)

This appeal is against the impugned order wherein refund claim filed by the appellant was denied. This is second round of litigation. In earlier round of litigation the appellant filed refund claim before the Adjudicating Authority who sanctioned their refund claim. Against that Revenue went in appeal before the Commissioner (Appeals) who denied the refund claim on the ground of unjust enrichment. Against the said order, appellant came in appeal before this Tribunal and

this Tribunal remanded back the matter to Original Adjudicating Authority to examine the issue of unjust enrichment and pass a fresh order vide order No.1194/10 SM(Br.) dated 31.8.2010. During pendency of the said proceedings, a show cause notice has been issued and same was adjudicated in which refund claim was denied. Against that order, appellant filed an appeal.

2. Shri Bipin Garg Id. Advocate for the appellant submits that the order passed by this Tribunal with the direction to the adjudicating authority to examine the issue of unjust enrichment and pass a fresh order is still pending. Therefore, the impugned show cause notice and adjudication are not warranted. Hence, prayed that the matter be sent back to the Adjudicating Authority in the light of the order passed by this Tribunal on 31.8.2010.

3. Considering the issue involved in narrow compass, both stay application as well as the appeal are taken up together for disposal after waiver of predeposit of impugned demand.

4. Going to the facts of the case that in remand proceedings the issue is pending before the adjudicating authority to examine whether bar of unjust enrichment is applicable to the facts and circumstances in this case or not, issuance of a fresh

show cause notice is not warranted. Therefore, impugned order is set aside and matter is send back to the adjudicating authority to examine the issue as directed by this Tribunal vide order No.1194/2010-SM (Br.) dated 31.8.2010. With this observation, appeal as well as stay application are disposed off.

[Dictated & Pronounced in the open Court].

(ASHOK JINDAL)
JUDICIAL MEMBER

Anita