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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/588 /2009 – SM[BR] Date 09/09/2010

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

To :
M/S RITU AGENCIES,

15-A, 38, W.E.A, KAROL BAGH, DELHI.

M/S RITU AGENCIES, Appellant

Vs

C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order** No. 977 / 2010-SM[BR] dated 3.9.2010 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. DELHI IV

   NEW CGO COMPLEX, NH-IV, FARIDABAD, HARYANA 121001.

2. Adv. / Consult

   MR.PIYUSH KUMAR,ADV

   B-25,LAJPAT NAGAR-III,N.DELHI

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
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-II

Date of hearing/decision: **3.9.2010**

Custom Appeal No. 588 of 2009-SM

[Arising out of order-in-Appeal No. 24 to 25/Cus/Appl/DLH-IV/2009 dated 3.9.2009 passed by the Commissioner (Appeals), Faridabad]

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

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

M/s Ritu Agencies — Appellant

Vs.

CC, Faridabad — Respondent

Appearance:

Appeared for the Appellant - Ms. Shikha Sapra, Advocate
Appeared for the Respondent - Shri K.P. Singh, SDR

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

Final Order No. 977/2010 SM (BR)

Per Ashok Jindal :

The appellants have filed this appeal against the absolute confiscation of the imported goods and penalties under Section 112 of the Customs Act, 1962. The facts of the case are that the appellant has imported assorted soft drinks and candy chocolate and filed a Bill of Entry and before clearance of the goods test samples were drawn. After examining the goods, it was found that one item was adulterated, some items have shelf life less than 60% of the original life and some of the items were mis-branded. The goods were absolutely confiscated and penalty of Rs.1,50,000/- was imposed on the appellants. Same was confirmed by the lower authority. Aggrieved from the said order, the appellant is before him.

2. Ld. Advocate appearing on behalf of the appellant submitted that the defects found during the course of examination were the curable defects and goods were to be allowed to provisional release to remove the defects, no opportunity was given to the appellants to cure the defects. The order of absolute confiscation is not justified. Moreover, the appellants are the importer and they came to know that defects in the goods only after the examination of the goods by CFL through Custom authorities. Before that, the appellants were not having any knowledge of the defects in the goods as per the examination report. Hence, the penalty imposed on the appellants is not sustainable. She, further, prayed that although the goods were not allowed to redeem the goods may be allowed to re-export to respective supplier of the goods to cure the defects.

3. On the other hand, ld. SDR submitted that the goods involved in this case are perishable items like soft drinks, chocolate which are being used for human consumption and the violation found in the examination report are so serious that goods cannot be allowed to enter into the country. The Customs Act deals with a situation that when the goods are prohibited under any Act which is in force in India becomes prohibited under the Customs Act also. The absolute confiscation of the impugned good was correct and the adjudicating authority has found that there was mens rea on the part of the appellant, hence, the penalty imposed on the appellant is justified.

4. Heard both sides.

5. I have examined the submissions by both the sides, I find that it is a case of import of the perishable items which being used for human consumption and directly related to the human life. As per the CFL report, these goods were not up to the mark and fit for human consumption, they are prohibited goods as per the Customs Act. The absolute confiscation by the lower authorities is correct and I also held that goods should not be allowed to enter into India. Further, the prayer of the ld. Advocate for re-export is also not to be justified at this stage as the date of expiry of these goods are 30th March 2010. Hence, the goods are of no value at this time and the goods cannot be permitted to re-export. With regard to the penalty confirmed by the lower authorities on the appellant, I find that from the reports, the examination of the impugned orders and

submissions by both the parties, no where it is coming out that the appellants were having the knowledge prior to importation of such goods that the impugned goods are ~~be~~ adulterated or defective goods at all. Under these circumstances, the penalty cannot be imposed unless and until there is malafide intention of the appellant to import such goods. Accordingly, penalty is waived. With these observations, the appeal is disposed of.

(Dictated & pronounced in open Court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

RM