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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

EXCISE APPEAL BRANCH

Appeal No. E/5872/2004&5874/2004 - EX[DB] Date 30/03/2010

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

To : C.C.E. JAIPUR-II
NEW CENTER REVEUE BUILDING,
SATAUS CIRCLE,C-SCHEME JAIPUR

C.C.E. JAIPUR-II Appellant
Vs
M/S SHREE RAJASTHAN SYNTEX LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 136 & 137/ 2010 EX[DB]** dated 23-3-10 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
M/S SHREE RAJASTHAN SYNTEX LTD.
SIMALWARA ROAD,DUNGARPUR (RAJASTHAN)

2. Adv. / Consult MS. A. NAYAK, ADV.,
A-5, BASEMENT,
LAJPAT NAGAR-III,
N. DELHI-24

3 C.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
18. HON'BLE PRESIDENT

Assistant Registrar
(Excise Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 5872 of 2004

(Arising out of Order-in-Appeal No. 556-565(RM) CE/JP-II/2004 dated 14.09.2004 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur).

DATE OF HEARING : 23.03.2010
DATE OF DECISION : 23.03.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, 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 ?	No
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?	Y

CCE, Jaipur-II .... **Appellant**
(Rep by Sh. A. Khanna, DR)

VERSUS

M/s Shree Rajasthan Syntex Ltd. .... **Respondents**
(Rep. by Ms. R. Nair, Adv.)

CORAM : **HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT**
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

FINAL **ORAL ORDER NO.** 13 67 / 10 - Ex

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard both sides.

2. This appeal arises from the order dated 14th September, 2004 passed by the Commissioner (Appeals), Jaipur. The said appeal before the Commissioner (Appeals) was filed by the respondents against the order dated 04.09.2002 whereby the respondents were directed to deposit the amount which they had collected as freight/insurance charges in excess to actual expenses incurred on account of transportation/insurance from time to time without any basis.

3. The challenge to the impugned order passed by the Commissioner (Appeals) is essentially on the ground that the Commissioner (Appeals) has not given any finding on the fact regarding the demand of duty amount which was ordered to be deposited and was the subject matter of the proceedings relating to finalization of the provisional assessment and the finding therein in respect of collection of such excess amount was not challenged by the assessee. The Commissioner (Appeals) in the impugned order has neither taken note thereof nor arrived at any finding in this respect and ignoring the same has interfered with the order passed by the original authority.

4. The learned advocate for the respondents has fairly conceded that the respondents had not challenged the findings in the proceedings of finalization of provisional assessment. Obviously, therefore, it was necessary for the Commissioner

(Appeals) to consider this aspect before deciding the matter before him. The same having not been considered, the impugned order is liable to be set aside and the matter is remanded to the Commissioner (Appeals) to decide the same afresh in accordance with the provisions of law. Accordingly, on the limited ground, as stated above, the appeal is allowed, the impugned order is set aside and the matter is remanded to the Commissioner (Appeals) to decide the appeal in relation to the respondents herein afresh in accordance with the provisions of law. We make it clear that interference in the impugned order is relating only to the respondents herein and not other parties to the impugned order. The appeal accordingly stands disposed of.

(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 5874 of 2004

(Arising out of Order-in-Appeal No. 556-565(RM) CE/JP-II/2004 dated 14.09.2004 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur).

DATE OF HEARING : 23.03.2010
DATE OF DECISION : 23.03.2010

FOR APPROVAL AND SIGNATURE :

HON'BLE MR. JUSTICE R.M.S. KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, 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 ?	No
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?	

CCE, Jaipur-II .... **Appellant**
(Rep by Sh. A. Khanna, DR)

VERSUS

M/s Shree Rajasthan Syntex Ltd. .... **Respondents**
(Rep. by Ms. R. Nair, Adv.)

CORAM : HON'BLE MR. JUSTICE RMS KHANDEPARKAR, PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Final ORAL ORDER NO. 137/10-EX

PER JUSTICE R.M.S. KHANDEPARKAR :

Heard both sides.

2. This appeal arises from the order dated 14th September, 2004 passed by the Commissioner (Appeals), Jaipur. The said appeal before the Commissioner (Appeals) was filed by the respondents against the order dated 04.09.2002 whereby the respondents were directed to deposit the amount which they had collected as freight/insurance charges in excess to actual expenses incurred on account of transportation/insurance from time to time without any basis.

3. The challenge to the impugned order passed by the Commissioner (Appeals) is essentially on the ground that the Commissioner (Appeals) has not given any finding on the fact regarding the demand of duty amount which was ordered to be deposited and was the subject matter of the proceedings relating to finalization of the provisional assessment and the finding therein in respect of collection of such excess amount was not challenged by the assessee. The Commissioner (Appeals) in the impugned order has neither taken note thereof nor arrived at any finding in this respect and ignoring the same has interfered with the order passed by the original authority.

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(JUSTICE R.M.S. KHANDEPARKAR)
PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Golay