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

Appeal No. C/136 /2010 - CU[DB], C/S/775/2010 Date **15/03/2011**

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

To :
M/S SABOO SODIUM CHLIUM CHLORO LTD.,
JAIPUR D-5, KALWAD SCHEME BEHIND, GOPAL
BARI, JAIPUR (RAJASTHAN.)THROUGH ITS
AUTHORISED SIGNATORY OF SH. ANIL SINGH.

M/S SABOO SODIUM CHLIUM CHLORO LTD., Appellant

Vs

C.C. (EXPORT) NEW DELHI Stay Order No. C/80/2011 Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/113/ 2011 CU[DB]** dated 07.03.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (EXPORT) NEW DELHI
AIR CARGO EXPORT, NEW
CUSTOM HOUSE, NEW DELHI
110037

2. Adv. / Consult
MR.NAVEEN MALHOTRA
470, LAWYER'S CHAMBERS,
PATIALA HOUSE COURTS, 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 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. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-III

Date of hearing/decision:7.3.2011

Stay Application No.775 of 2010 in
Customs Appeal No.136 of 2010

[Arising out of order in original No.ACE/DDR/25/2010 dated 11.3.2010 passed by Commissioner of Customs , Air Cargo (Exports) , New Delhi].

For Approval and Signature:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. M. Veeraiyan, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 26 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Saboo Sodium Chloro Ltd. .. Appellant

Vs.

C.C., Air Cargo (Exports), New Delhi ... Respondent

Appearance:

Shri Naveen Malhotra, Advocate for the applicants/appellants
Shri K.K. Jaiswal, Authorized Departmental Representative(DR) for the Revenue

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. M.Veeraiyan, Technical Member

Final Oral Order No. C/113/11
S. O. No C/30/11

Per S.S.Kang:

Heard both sides.

2. The applicants filed this application for waiver of pre-deposit of penalty of Rs.50 lakhs imposed under Section 112 of the Customs Act, 1962.

3. The brief facts of the case are that the applicants made import of capital goods by availing the benefit of Notification No.160/92-Cus., dated 24.4.92. As per the condition of the Notification, the applicants were entitled to import capital goods goods without payment of duty on the condition that the same were used in the manufacture of goods which were to be exported and export obligation is to be fulfilled within specified period. Show cause notice dated 2.7.2003 was issued to the applicants demanding duty in respect of the capital goods which were imported without payment of duty and for imposing penalty as the applicants failed to fulfil the export obligation within specified period. The applicants filed reply to the notice and the adjudicating authority passed the impugned order.

4. The contention of the applicants is that subsequent to the passing of the impugned order, the applicants approached the Directorate General of Foreign Trade and vide letter dated 15.7. 2010 , the competent authority allowed the request of the applicants and it was decided to allow counting of export of alternative products towards export obligation. The DGFT vide letter dated 21.10.2010 after considering the documents produced by the applicants has accepted the applicant's contention towards fulfilment of the export obligation and redeemed the bank guarantee and letter of undertaking. The contention of the applicants is that after passing of the impugned order, the DGFT issued the letter that the export obligation has been fulfilled. This letter was not before the adjudicating authority while passing the impugned order, hence the matter requires reconsideration by the adjudicating authority in view of the decision taken by the DGFT.

5. The Revenue submitted that at the time of passing of the impugned order, the applicants failed to show that the export obligation has been fulfilled, therefore, the impugned order has been rightly passed.

6. We find that in the impugned order dated 11.3.2010, the Commissioner of Customs after taking into consideration the proceedings pending before DGFT held that the impugned order is passed without prejudice to the notice of the customs duty and interest issued by the DGFT. We find that as the DGFT's letter dated 21.10.2010, which is subsequent to the passing of the impugned order,

is to the effect that the export obligation has been fulfilled and the bank guarantee and letter of undertaking executed by the applicants is redeemed in terms of para 5.13 Hand Book and para 5.9 of the Policy Book. This letter was also endorsed to the Commissioner of Customs. In these circumstances, the matter requires reconsideration by the adjudicating authority afresh. The impugned order is set aside after waiving the requirement of pre-deposit of penalty and the matter remanded to the adjudicating authority to decide afresh after affording an opportunity of hearing to the applicants. Both sides are at liberty to produce evidence in support of their claims.

(S.S. Kang)
Vice President

(M. Veeraiyan)
Technical Member

scd/