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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/554 /2009,676 /2009 - CU[DB], C/S/2559/09, C/S/3126/09 Date **31/05/2011**

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

To :
SHRI FAISAL HAMID, PROP.
M/S SOUND OF MUSIC,
N-61, GREATER KAILASH-I, WINDSOR MANSION
(BASEMENT), NEW DELHI-110048.

SHRI FAISAL HAMID, PROP. Appellant

Vs

C.C.(PREVENTIVE) **STAY ORDER NO.C/180-181/2011-CU DB** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/202-203/ 2011 CU[DB]** dated 24.05.2011 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.(PREVENTIVE)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult
MR.SUNIL MEHTA
6- LAWYERS CHAMBER,
DELHI HIGH COURT,NEW DELHI

3. C.D.R
4. Bar association. CESTAT. New Delhi
5. Director Publications. Customs. Excise. I.P. Estate. New Delhi
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 - 110005
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
14. M/S ALI TRADING EXPOSITION, WINDSOR MANSION (BASEMEENT) N-61, GREATER KAILASH-I, NEW DELHI-110048.

Assistant Registrar
(Customs Appeal Branch

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:23.05.2011
Date of decision:23.05.2011

[Arising out of common Order-in-Original No.12/COMM/H.K.T./2009 dated 10.07.2009 passed by the Commissioner of Customs (Preventive), New Delhi].

Customs Stay No.2559 of 2009 in
Appeal No.554 of 2009

Shri Faisal Hamid — Appellant

Vs.

CC (Preventive), New Delhi — Respondent

Customs Stay No. 3126 of 2009 in
Appeal No. 676 of 2009

M/s. Ali Trading Exposition — Appellant

Vs.

CC (Preventive), New Delhi — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

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1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982. — No

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? — Yes

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Appearance: Rep. by Shri Sunil Mehta, Advocate for the appellants.
Rep. by Shri Sonal Bajaj, SDR for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final Order No.C/202-203/11/Dated: 23.05.2011
Stay order No. C/180-181/11

Per Archana Wadhwa:

After dispensing with the conditions of pre-deposit of duties and penalties (as the appellants have already deposited an amount of Rs.19.5 Lakhs), we proceed to decide the appeal itself inasmuch as we find that the impugned order stands passed by the Commissioner (~~Appeals~~) in violation of the principles of natural justice.

2. Shri Sunil Mehta, Advocate is present for the appellant and Shri Sonal Bajaj, SDR is present for the respondent.

3. After hearing both the sides, we find that the appellants' grievance is that the relied upon documents i.e. Annexures to the show cause notice were not handed over to them. Ld. Advocate appearing for the appellants have shown us a letter addressed by them to the Commissioner (~~Appeals~~) regarding supply of the said documents. On the other hand, it is the Revenue's contention that the Annexures to the show cause notice were supplied to the appellants' representative.

4. Without going into controversy as to whether the documents were supplied or not, we find that the impugned order stands passed by the Commissioner in the absence of defence reply filed by the assessee. Further, as the appellants were insisting on for supply of the documents,

they also did not attend any personal hearing. In the absence of any defence reply, it is not possible for us to decide the appeal either way.

5. Ld. Advocate appearing for the appellants submits that they are ready to bear the expenses for obtaining the relied upon documents.

5. Ld.DR has no objection to the above course of action.

6. In view of the above, we set aside the impugned order and remand the matter to the Commissioner (Appeals). The appellants would obtain the requisite relied upon documents at their expenses within a period of 2 months from today and would file the reply thereafter within a period of 45 days from the date of receipt of the relied upon documents. Needless to say that the appellants would be afforded an opportunity to putforth their case in person and would not seek un-necessary adjournments on that that ground. The stay petition and the appeal get disposed of in the above manner.

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

Ckp.