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(70)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

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

CUSTOMS APPEAL BRANCH

Appeal No. C/87 -89 /2010 - CU[DB]

Date **02/06/2011**

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

To :
1. ARUN AGGARWAL
2. ASHOK AGGARWAL
3. M/S. KLA INDIA PUBLIC LIMITED,

2ND MILESTONE, KICHHA ROAD, RUDRAPUR
(U.S.NAGAR), UTTARAKHAND.

M/S. KLA INDIA PUBLIC LIMITED Appellant

Vs

C.C.E. MEERUT II & VICE-VERSA Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/216-218/ 2011 CU[DB]** dated 27.05.2011 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.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult **MR.KHAITAN & CO.,**
12TH FLOOR ASHOKA ESTATE,
24,BARAKHAMBA ROAD,
CONNAUGHT PLACE 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

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
COURT NO.III

Appeal No.C/87-89/10

Arising out of OIO Nos.61-63/COMMR/M-II/2009 dated 16.12.09

Passed by: Commissioner of Central Excise & Customs, Meerut

For approval and signature:
Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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?	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

Appellant/s	...	M/s. KLA India Public Ltd. CCE Meerut
Represented by	...	Shri Joseph Vellapally, Sr. Advocate Shri Susmit Pushkar, Advocate
		Vs.
Respondent/s	...	CCE Meerut M/s. KLA India Public Ltd
Represented by	...	Shri Sonal Bajaj, SDR

CORAM:
MRS. ARCHANA WADHWA, MEMBER (JUDICIAL)
MR. MATHEW JOHN, MEMBER (TECHNICAL)

Date of Hearing:25.05.11
Date of Decision:25.05.11

Final ORDER No. C/ 216 – 218 /2011

Per: Archana Wadhwa:

All the appeals filed by the appellants as also by the Revenue are being disposed off by a common order as the issue involved is identical.

2. After hearing both the sides duly represented by Shri Joseph Vellapally, learned senior advocate and Shri Susmit Pushkar, learned advocate appearing for the appellants and Shri Sonal Bajaj, learned DR appearing for the Revenue, we find that the issue involved in the present appeal is alleged export of non basmati rice under the guise of basmati rice. It is admitted position that export of non basmati rice is prohibited. For holding that the consignment in question was of non basmati rice, Revenue has place reliance on the test reports of SGS laboratory. Even though learned senior advocate appearing for the appellants contested that the said report of SGS is not against them but we find that during the course of disposal of stay petitions, the objection of the learned senior advocate as regards testing of the sample by SGS laboratory was taken into consideration. After noting that one of the samples has been tested by CRCL and one of the samples by SGS, the Bench directed the department to get one of the remaining samples tested by one of the testing laboratories notified under the Export (Quality Control and Inspection) Act, 1963.

3. Learned DR appearing for the Revenue submits that in terms of the above directions, further tests have been carried out and he places on record the result of the said tests. As admitted by both the sides and as is clear from the facts, the above test reports were not before the

adjudicating authority and were not the subject matter of the impugned order. As such, we are of the view that the matters are required to be remanded to the Commissioner for fresh adjudication after taking into account the subsequently obtained test reports. For the said purpose we set aside the impugned order and remand all the appeals, including the appeal of the Revenue for enhancement of penalty, to the adjudicating authority for denovo decision, after considering the result of the test reports obtained by the Revenue in terms of the directions of the Tribunal. We, however, make it clear that we have not gone into the merits of the case and as such are not expressing any opinion. Appellants are at liberty to contest the said reports before adjudicating authority and to rely upon the evidences, which it may deem fit. They are at liberty to raise any ground, in their defence before the adjudicating authority. All the appeals are allowed by way of remand.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**