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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/413 /2010, C/S/2322/2010, C/417 /2010 - CU[DB], C/S/2364/2010 Date **17/01/2011**

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

To :
M/S AWADESH KUMAR MISHRA PROP. OF
M/S ADARSH JYOTI ,
1491, NAVIPUR, SULTANPUR, (U.P.)

M/S AWADESH KUMAR MISHRA PROP. OF Appellant

Vs

C.C. (ICD) NEW DELHI **STAY ORDER NO.C/7-8/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order C/18-19/ 2011 CU[DB]** Dated 11.01.2011

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. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW
DELHI 110020.
2. Adv. / Consult
MR.K K ANAND
A-103, DEFENCE COLONY,
NEW DELHI-110024
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)

SHRI SURESH MITTAL, PROP. OF
M/S LAXMI NEWS PRINT AGENCY,
943/4, CHOTTA CHIPPIWARA,
CHAWRI BAZAR, DELHI.

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-IV

Date of hearing/decision: 10.1.2011

Stay Application No.2322 of 2010 and Customs Appeal No.413 of 2010

Arising out of the order in original No.28/2010 dated 3.5.2010 passed by the Commissioner of Customs, New Delhi.

Stay Application No.2364 of 2010 and Customs Appeal No.417 of 2010

Arising out of the order in original No.28/2010 dated 3.5.2010 passed by the Commissioner of Customs, New Delhi.

For Approval and Signature:

Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

1	Whether Press Reporter 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 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

1. Shri Awadesh Kumar Mishra Prop. of M/s Adarsh Jyoti ... Applicant/appellant
2. Shri Suresh Mittal, prop. of M/s Laxmi News Print Agency

Vs.

C.C., New Delhi .... Respondent

Appearance:

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

Coram: Hon'ble Mrs. Archana Wadhwa, Judicial Member
Hon'ble Mr. M. Veeraiyan, Technical Member

Final Oral Order No. C/18-19/11
Stay order No. C/78/11

Per Archana Wadhwa:

After dispensing with the condition of pre-deposit of penalties in both the cases, we proceed to decide the appeals themselves inasmuch as the impugned order stands passed in gross violation of the principles of natural justice.

3. After hearing both sides and after going through the impugned order, we find that the personal hearing in the matters was fixed by one letter issued from the office of the Commissioner. Letter dated 2.9.2009 fixed the hearing for 23.9.2009 or 28.10.09 or 23.11.09 or 16.12.2009. The said hearing dates were subsequently revised by letter dated 16.9.09 and the appellants failed to attend the personal hearing either on 9.10.09 or 28.10.09 or 23.11.09.

4. Learned Advocate appearing for the appellants submits that providing of three hearing dates by one letter of intimation is ~~not~~ held not to be justified as held by the Tribunal in the case of Afloat Textiles (P) Ltd. vs. C.C.E., Vapi reported in 2007 (215) ELT 198 (Tri-Ahmd.). He also relies on various other decisions to the same effect. He further submits that first hearing was fixed before supplying them all the relied upon documents. As such, there is a gross violation of principles of natural justice requiring the impugned order to be set aside on this sole ground itself.

5. After hearing the learned DR, we agree with the above contention of the learned Advocate. In any case, it is a fact that the appellants had not filed any defence reply on record and sought time to provide the same within a period of one month of the supplying of the relied upon documents. The said impugned order ~~which~~ stands passed without considering any defence reply on record, in which case, the same is required to be set aside and the matter is remanded to the adjudicating authority.

6. In view of the above, we set aside the impugned order and remand the matter to the Commissioner for de novo adjudication. Needless to say that principles of natural justice would be observed by the adjudicating

authority and the appellants would also not seek unnecessary adjournment and would co-operate with the adjudicating authority.

7. Stay petitions and the appeals are disposed of in above manner.

(Archana Wadhwa)
Judicial Member

(M. Veeraiyan)
Technical Member

scd/