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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/674 /2006 - CU[DB] Date **17/01/2011**

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

To :
C.C.KANPUR

117/7, SARVODAYA NAGAR, KANPUR.

C.C.KANPUR Appellant

Vs

M/S JAS INTERNATIONAL Respondent

I am directed to transmit herewith a certified copy of **Final order C/21/ 2011 CU[DB]** dated 13.01.2011 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
M/S JAS INTERNATIONAL
31/43- SHERIEF DEVJI STREET,
CHAKLA STREET, MUMBAI.
400003
2. Adv. / Consult
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)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Customs Appeal No. 674 of 2006

[Arising out of Order-in-Original No. 11/Cust/Commr/Adj/2005 dated 15.12.2005 both passed by the Commissioner of Customs, Kanpur]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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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.

Commissioner of Customs & Central Excise, Kanpur — Appellants

Vs.

M/s. Jas International — Respondent

Appearance:

Shri Sonal Bajaj, DR for the Appellants
None for the Respondent

Date of Hearing/decision : 13.01.2011

Final **ORAL ORDER NO. C/21/11**

Per Archana Wadhwa:

Being aggrieved with that part of the impugned order of the Commissioner vide which he has not confiscated the imported goods, while confirming Anti Dumping Duty of Rs.27,06,354.00, Revenue has filed the present appeal.

2. We have heard Shri Sonal Bajaj, learned DR appearing for the Revenue. None appeared for the respondents.

3. The respondents herein imported measuring tapes of steel (Chinese origin) of various sizes at the declared value of Rs.2,06,385/-. Bill of entry was filed by them classifying the said goods under tariff heading 94039000. However, Revenue felt that the said measuring tapes of steel were properly classifiable under Customs Tariff heading 90178010, attracting Anti Dumping Duty. Accordingly, proceedings were initiated against them for confirmation of the above duty.

4. During the course of adjudication, appellant made a request for re-export of the said goods to the original exporters inasmuch as it was financial not viable for them to pay Anti Dumping Duty. Commissioner vide his impugned order confirmed the Anti Dumping Duty and has also rejected their request for re-export. However, as regards the proposal to confiscate the goods, he observed as under:-

> " As regards the confiscability of the goods I agree fully with the importers that merely by failing to classify the goods

properly under the Customs tariff, they did not commit any offence of mis-declaration. Moreover, in this case the goods were examined by Custom a first check basis and assessment was made there after. It is not the case of the Department that the party had described the goods differently, deviating deliberately from the description of the goods on records / papers available with him.

The seizure of the goods and the container therefore was unwarranted and the same are not liable to be confiscated. "

5. The said part of the impugned order stands appealed by the Revenue on the ground that the importer had dishonest intention of evading the Anti Dumping Duty and as such not only mis-declared the classification of the goods but also gave incomplete, ambiguous and vague description of the imported goods as 'tapes,' whereas on examination the goods were found to be 'measuring tapes of steel.'

6. We find no merits in the above contention of the Revenue. Admittedly, the goods were declared as 'tapes' and the same were found to be 'tapes'. Further, classifying the said goods under a different Customs tariff heading than the one adopted by the Revenue for the purpose of Anti Dumping Duty, cannot said to be with a malafide intention, in the absence of any evidence to that effect. In any case, adoption of correct classification is in the hands of Customs authorities who can always change the same from the declared classification to the correct classification. To classify the product under a particular heading,

according to the understanding of the importer, by itself cannot be held a ground so as to confiscate the imported goods. As such, we find no infirmity in the view adopted by the Commissioner. Accordingly, the appeal filed by the Revenue is rejected.

(Archana Wadhwa)
Member(Judicial)

(M. Veeraiyan)
Member(Technical)

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