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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/272 /2007 - CU[DB] Date **24/02/2011**

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

To :
C.C. (EXPORT) NEW DELHI
AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037

C.C. (EXPORT) NEW DELHI Appellant

Vs

M/S JAYPEE HOTELS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order C/88/ 2011 CU[DB]** dated 21.02.11 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 JAYPEE HOTELS LTD.
JAYPEE PALACE, FATEHABAD,
AGRA, (U.P.)
2. Adv. / Consult MR. MOHAN LAL,
B-67, FLATTED FACTORY COMPLEX,
OKHLA PHASE -III, NEW DELHI-20.
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

COURT NO. IV

Date of Hearing : 17.2.2011

Custom Appeal No. 272 of 2007

[Arising out of the Order-in-Appeal No. CC(A)/16/ACU/D-I/2007 dated 23.2.2007 passed by The Commissioner of Custom (Appeals), New Delhi]

For Approval and signature :

Hon'ble Mr. Ashok Jindal, 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?	:	Yes
2.	Whether it would 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?	:	NO
4.	Whether order is to be circulated to the Department Authorities?	:	NO

CC, New Delhi — Appellant

Vs.

M/s Jaypee Hotels Ltd. — Respondent

Appearance :

Appeared for Appellant : Shri Fateh Singh, DR
Appeared for Respondent : Shri Mohan Lal, Advocate

Coram:
Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Final Order No. C/82/11 ....dated 21.2.11

Per Ashok Jindal:

This appeal is filed by the Revenue.

2. The facts of the case are that the respondent filed a Bill of Entry under EPCG Scheme for the clearance of 400 Sq. Ft. of polished marble slabs of size 72"x39"x3/4" at concessional rate of duty in terms of Notification No. 97/2004-Cus. dated 10.9.2004. As per the EPCG licence, the respondent was allowed to import polished marble slabs having size 72"x39"x3/4". But on examination the goods were found as polished marble slabs of size 72"x24"x1" (36 pieces) making a total quantity of 432 Sq. Ft. as the description/specification and the quantity of goods did not tally with the description mentioned in EPCG licence. The respondents were also asked to produce the documentary evidence for value of goods which was produced for examination. The respondent admitted their mistake that the goods were not as per the purchase order and also admitted that the rate as per the consignment is US$ 38 per Sq. Ft. Later on, the respondent got amended their EPCG licence for import of polished marble slab for the quantity of 1350 Sq. Ft. Thereafter, adjudication was done, the value of goods were enhanced and goods were confiscated, redemption fine and penalties were also imposed. The said order was challenged by the respondent before the Commissioner (Appeals), who set aside the adjudication order and allowed the appeal. Aggrieved from the said order, Revenue is in appeal before this Tribunal.

3. The ld. DR submitted that in this case the respondent has mis-declared the goods such as specification, value and quantity. Moreover, at the time of import, they were not having valid licence from DGFT to import such a quantity. Hence, the adjudicating

authority has rightly loaded the value and imposed redemption fine and penalty on the respondent and prayed that the same may be restored.

4. On the other hand, the ld. Advocate for the respondent appeared and submitted that although initially the respondent was having a licence for import of 400 Sq. Ft of the marble but later on, the said licence was got amended. He further submitted that the respondent have placed an order to their foreign supplier for the specific size of 72"x34"x3/4" of 400 Sq. Ft. but the same was not available with their foreign supplier and the goods were consigned to them in the size of 72"x24"x1". There was no intention of the respondent to import the said size of marble under the guise of the order placed by them. There is no malafide intention of the respondent to import such goods. Moreover, the appellants have discharged their duty liability of the excess quantity and the value as per invoice. Hence, the imposition of redemption fine and penalty is not sustainable as there is no mis-declaration with deliberate intention of the respondent. To support this contentions, he relies on the decision of **Arthanari Loom Centre Vs. CC, Trichy** reported in 2001 (132) ELT 464 (Tri.-Chennai) and **Zenith Rubber & Plastic Works Vs. CC, Mumbai** reported in 2010 (262) ELT 272 (Tri.-Mumbai).

5. Heard and considered.

6. On a careful examination of the submissions made by both sides, we have perused the record also. In the adjudication order, we find that enhancement in value has been done without assigning any reasons which is in violation of Board's Circular No. 91/2003-Cus. dated 14.10.03, as no consent of the respondent has been taken for enhancement of value. Further more, the respondent had discharged the duty liability on transaction value of the goods. Moreover, the contention of the ld. DR that at the time of import, the respondents were not having the licence under EPCG Scheme from DGFT of the quantity imported is not sustainable as we find that the respondent has got amended the licence to that extent. Moreover, in the adjudication proceedings, no where it is coming out that the respondent has mis-declared the description, specification/quantity of the goods with malafide intention. In the absence of such an allegation, the lower appellate authority has rightly set aside the adjudication order. We are also in agreement with the lower appellate authority. Hence, we do not find any reason to interfere with the order of authority. Accordingly, the appeal filed by the Revenue is rejected.

(Pronounced in Court)

(Ashok Jindal)
Member (Judicial)

(Mathew John)
Member (Technical)

RM