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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/186 /2007 - CU[DB] Date **02/06/2011**

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

To :
C.C, (I & G), NEW DELHI
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW
DELHI-110037.

C.C, (I & G), NEW DELHI Appellant

Vs

RX-INFOTECH PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/225/ 2011 CU[DB]** dated 30.05.2011 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
RX-INFOTECH PVT. LTD.
601, BHANDARI HOUSE, NEHRU
PLACE, NEW DELHI-110019.

2. Adv. / Consult

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/186/07

Arising out of OIA No.CC(A)/55/AIR/D-I/2006, dated 28.12.06

Passed by: Commissioner of Customs (I & G), New Delhi

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 ... CC (I & G) New Delhi

Represented by ... Shri S.R. Meena, SDR

Vs.

Respondent/s ... M/s. R.X. Infotech Pvt. Ltd.

Represented by ... None

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

Date of Hearing:30.05.11
Date of Decision:30.05.11

Final ORDER No. C/225/11

Per: ***Archana Wadhwa:***

Being aggrieved with the order passed by Commissioner (Appeals) Revenue has filed the present appeal. We have heard learned DR, Shri S.R. Meena. Nobody appeared for the respondents.

2. As per facts on record respondents filed a refund application on 29.11.05 for Rs.45,307/- on the ground that they had imported 40 GB hard disk vide B.E. No.180862 dated 16.11.05 on which duty was assessed at the rates (0% + 16% + 2% + 0% + 4%) as per their declaration, whereas duty payable was at the rates (0% + 0% + 0% + 4%). This was due to not availing benefit of Excise Notification No.06/2002 S.No.261A. Duty was got deposited by them vide TR-6 challan No.98131282 dated 18.11.05.

3. The adjudicating authority had decided the refund application vide his Order-in-Original No.35/2006 dated 05.05.06 wherein he had rejected the claim of the respondent being not maintainable on the main ground that the respondent had chosen to file a refund claim directly without ~~appearing~~ appealing against the order of assessment and hence it is not legally sustainable. The adjudicating authority had relied upon the judgment of Hon'ble Supreme Court in the case of **Priya Blue Industries Ltd. Vs. Commissioner of Customs (Prev)** reported in **2004 (172) ELT 145 (S.C.)**.

4. Being aggrieved the respondent filed an appeal before the Commissioner of Customs (Appeals) on the following grounds:

1. that the acceptance of assessment of bill of entry does not preclude the right of the appellant (respondent) to file the appeal against the order of the adjudicating authority.

2. that the exemption under Central Excise Notification No.6/2002 S.No.261(a) was available to them at the time of filing the Bill of Entry.

5. The Commissioner (Appeals) held that ~~relief~~ the exemption under the said notification was available to the respondent and it was established law that the excess duty paid must be returned to the party as held by the Hon'ble High Court, Madras in the case of Rexin Sea (India) Vs. UOI & Others 1991 (33) ELT 282 (Madras) and in the matter of Premraj and Garpatray & Co. (P) Ltd., Vs. Asistant Collector of Customs & Others 1977 ELT (J166). Accordingly he allowed the appeal of the party with consequential relief.

6. Revenue in their appeal memo has relied upon the Hon'ble Supreme Court's decision in the case of **Priya Blue Industries Ltd. Vs. Commissioner of Customs (Prev)** reported in **2004 (172) ELT 145 (S.C.)** for contending that in the absence of any challenge to the assessed bill of entry, refund cannot be entertained. We have also submitted that the provisions of unjust enrichment have not been examined by the Commissioner (Appeals) and as such the impugned order cannot be held to be legal. They have accordingly prayed for setting aside the same.

7. We find that Commissioner (Appeals) has passed a very cryptic order without taking into account the declaration of law by the Hon'ble

Supreme Court in the case of Priya Blue Industries Ltd. For better appreciation the relevant paragraph of the impugned order is reproduced below:

> *"I find that the adjudicating authority has not disputed/challenged the fact that the exemption under Central Excise Notification No.6/2002 Sr. No.26(a) was available to the appellant and rejected the claim on the ground that the bill of entry was not reviewed. I find that the relief under the said notification was available to the appellant. It is established law that the excess duty paid must be returned to the appellant. AS was held by the Hon'ble High Court, Madras in the case of Rexin Sea (India) Vs. UOI & Anr. – 1991 (33) ELT 282 (Madras) and in the matter of Premrai and Ganpatrai and Company (P) Ltd. V. Assistant Collector of Customs and Others – 1997 ELT (J166)."*

8. In as much as admittedly the bill of entry ~~asqed~~ assessed by the officer was not appealed against, the law declared by the Supreme Court is applicable to the facts of the present case. It stands held by the Hon'ble Apex Court that refund cannot be entertained directly if the bill of entry has not been appealed against. As such we are of the view that the impugned order passed by Commissioner (Appeals) is liable to be set aside on this short ground itself. We accordingly allow the appeal filed by the Revenue and set aside the impugned order-in-appeal.

(Pronounced in Court)

(Mathew John)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

*Jk**