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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/231 /2006 - CU[DB] Date **13/06/2011**

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

To :
M/S. NEW ASHOKA WATCH CO.
94, NEW LAJPAT RAI MARKET, DELHI

M/S. NEW ASHOKA WATCH CO. Appellant

Vs

COMMISSIONER OF CUSTOMS (PREV.) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/244/ 2011 CU[DB]** dated 06.06.2011 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
COMMISSIONER OF CUSTOMS (PREV.)
IGI AIRPORT, NEW DELHI

110037

2. Adv. / Consult
MR.B.L.NARSIMHAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110029

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/231/06

Arising out of OIO No.09/Comm/05 dated 30.11.05

Passed by: Commissioner of Customs (Prev), 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	...	M/s. New Ashoka Watch Co.
Represented by	...	Shri R.K. Hasija, Advocate
		Vs.
Respondent/s	...	CC (Prev) New Delhi
Represented by	...	Shri K.K. Jaiswal, SDR

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

Date of Hearing:01.06.11
Date of Decision:01.06.11

ORDER No. C/244/11

Per: Archana Wadhwa:

As per facts on record the appellant is having a shop in New Lajpat Rai Market engaged in trading business of spare parts of watches and watch tools etc. The said shop was put under Search ~~seizure~~ by the officers on 10.12.02. As a result pencil cells/button cells of foreign origin valued at Rs.3,47,350/- were recovered.

1.1 Their godown premises located nearby were also put to search resulting in recovery of pencil cells, button cells, dry batteries and adhesive tape etc. of foreign origin collectively valued at Rs.29,49,110/-. The said goods recovered from the shop as also from the godown were put under seizure, as the appellant could not produce any evidence to show the legal import/acquisition/possession of the said goods. Shri Manjeet Singh, Partner of the firm in his statement dated 10.12.02 submitted that they used to purchase the said goods from various persons coming to their shop against cash payments.

2. Subsequently Shri Jatender Singh, Proprietor of the unit vide his letter dated 25.02.03 produced on record certain invoices issued by M/s. Jaipur Time Industries, M/s. Prakash Sales Agencies and M/s. Ashish Overseas showing the sale of the button cells etc. to the appellant. Investigations conducted at the buyers' end also prove that the goods were sold by them. As regards certain discrepancies in the description of the model numbers, the same was explained by the buyers.

3.1 Shri Sunil Kumar, authorized signatory of M/s. Prakash Sales Agencies in his statement submitted having sold the goods to the appellant. He further clarified that they are engaged in the import and sale of the said goods. He produced bills of entries, invoices, packing list, sale invoices to substantiate his above stand.

3.2 Shri Om Prakash Parekh, authorized signatory of M/s. Jaipur Time Industries also admitted having sold the goods to the appellant and further deposed that they were regular importer of button cells, battery cells, video cassettes and watch parts for many years. They also produced various bills of entries etc. to show that the goods in question were validly imported.

3.3 Similarly Shri Ashish Mittal, Proprietor of M/s. Ashish Overseas, Faridabad in his statement deposed that they were regular importer of dry battery and other gift items for the last two years and produced bill of entry, invoices, packing list, ledger and sales invoices showing the sale of the goods to the appellant.

4. Based upon the above facts show cause notice dated 02.12.03 was issued to the appellant proposing to confiscate the goods seized by the officers and to impose penalties upon them. The said show cause notice culminated into an order passed by the Commissioner vide which he has confiscated the goods in question with an option to the appellant to redeem the same on payment of redemption fine of Rs.12 lakhs and on payment of duty of Rs.6,62,593/-, along with interest. He also imposed penalties of Rs.7 lakhs on the appellant under Section 112 of the Customs Act, 1962. The said order of the Commissioner is impugned before us.

5. After hearing both the sides and after going through the impugned order, we find that the documents produced by the appellant on record reflecting upon the legal import of the goods stand rejected by the adjudicating authority on the ground that the description given in the bills of entries does not match and tally with the description of the goods seized by the officers in as much as certain model numbers are different. He has also observed that since the said documents were not produced at the time of seizure itself the production of the same subsequently seems to be an after thought. He also relied upon the statement of the partner of the firm to the fact that they ~~do~~ did not have any documents to cover the goods in question.

6. We find that the goods are button cells, dry battery cells, pencil cells, which are not notified items under Section 123 of the Customs Act. As such burden to prove that the same are legally imported does not lie on the appellant. Admittedly the said goods are freely AP importable and all the three persons, who have accepted to have supplied the goods to the appellant ~~from~~ are the persons who are engaged in the legal import of the goods. Merely because the MRP sticker required to be stuck at the time of import of the goods were not found on the cartons seized from the appellant's premises by itself cannot be made a reason to prove that the same were not imported by the three suppliers. In case of non notified goods, burden to prove that the same are smuggled into the country lies very heavily upon the Revenue. As such even if it is assumed that the documents produced by the appellant do not cover the seized items and the appellant is unable to produce the relevant documents showing legal import of the goods, the goods cannot be confiscated on this ground itself. Evidence to show that the seized goods were imported illegally into

the country is upon the Revenue. The above legal proposition does not require the support of any precedent decisions in as much as the ~~other~~ said issue is settled. In the present case we find that apart from relying upon the fact that the bills produced by the appellant do not cover the goods in question, there is no other evidence produced on record by the Revenue showing the smuggled character of the goods in question. Once the goods are imported and become a part of the mass of such goods in the country, the production of documents are dispensed with and the same cannot be held to be smuggled unless contrary is proved by producing positive and tangible evidence. There being none in the present case, We find no reasons to uphold the impugned order. Accordingly the confiscation of the goods and penalty imposed upon the appellant is set aside. Their appeal is allowed with consequential relief.

(Pronounced in Court)

(Mathew John) **Member (Technical)**	**(Archana Wadhwa)** **Member (Judicial)**

*Jk**