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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/365 /2010,391 /2010 - CU[DB]   Date **12/07/2011**

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

To :
M/S L.G.W. LIMITED,
NARAYANPUR, 24 PARGANAS (NORTH),
P.O. RAJARHAT, KOLKATA-700136.

M/S L.G.W. LIMITED,   Appellant

Vs

C.C.E ALLAHABAD   Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/316-317/ 2011 CU[DB]** dated 05.07.2011 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.E ALLAHABAD
38,M.G.MARG, CIVIL LINES,
ALLAHABAD

2. Adv. / Consult
MR.D. VERMA, ADVOCATE
B-4/157 (LOWER GROUND FLOOR),
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
14. SHRI SATYA NARAYAN CHANDAK,
C/O M/S SHANKARA SILK & SAREES,
CK.13/78-79, CHANDRA MARKET,
PASUPATESHWAR, VARANASI.

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 : 5.7.2011

Custom Appeal No. 365 and 391 of 2010

[Arising out of common Order-in-Appeal No. 28-29/CUS/ALLD/2010 dated 19th April 2010 passed by the Commissioner, Customs & Central Excise (Appeals), Allahabad]

Coram:
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter 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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	No

M/s L.G.W. Limited — Appellants
Shri Satya Narayan Chandak

Vs.

CCE, Allahabad — Respondent

Appearance:

Appeared for Appellant : Shri D. Verma Advocate with Shri Aryak Dutt, Advocate

Appeared for Respondent : Shri B.L. Soni, SDR

Coram:

Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. C/316-317/11 dated 5.7.11

Per **S.S. Kang** :

Heard both sides.

2. The Appellant filed ~~this~~ these Appeals against the Order-in-Appeal No. 28-29/CUS/ALLD/2010 dated 19.4.2010. The brief facts of the case are that the Appellant M/s L.G.W. Ltd. made import of Chinese silk yarn by availing the benefit of Notification No. 32/2005-Cus. dated 8.4.2005. The condition of the Notification is that the raw material imported by availing the benefit of notification cannot be sold in the market as such. The case of the Revenue is that on 12.9.2007, 12 bales of raw silk yarn were recovered from the godown of M/s Shankara Silk & Sarees, Varansasi. The statement of Shri Satya Narayan Chandak, proprietor of M/s Shankara Silk & Sarees was recorded under Section 108 of the Customs Act and in his statement he admitted that the raw silk yarn in question were purchased from the Appellant M/s L.G.W. Ltd. As the raw silk bales were sold by the Appellant M/s L.G.W. Ltd. in violation of the condition of the notification the same was seized and thereafter Show Cause Notice was issued to the Appellants for confiscation of the raw silk yarn and for imposition of penalties. The Adjudicating Authority ordered absolute confiscation of 12 bales of raw silk yarn and also imposed penalties of Rs.1.00 lakh each on both the Appellants. The Commissioner (Appeals) dismissed Appeals filed by the Appellants.

3. The Appellant M/s L.G.W. Ltd. raised a preliminary objection regarding jurisdiction of the Deputy Commissioner (Preventive), Varanasi on the ground that the goods were imported and assessed at Calcutta

port, therefore, the Deputy Commissioner (Preventive) Division, Varanasi has jurisdiction to issue the Show Cause Notice in respect of the goods and Appellant relied upon the decisions in the case of **CC Vs. Sayed Ali & Anr.** reported in 2011-TIOL-20-SC-CUS and in the case of **Northern India (P) Ltd. Vs. CCE** reported in 1991 (53) ELT 81 and in the case of **Grand Slam International Vs. CC** reported in 1992 (57) ELT 161 in support of their plea on jurisdiction.

3. In reply to the preliminary objection raised by the Appellant, the contention of the Revenue is that the issue of jurisdiction was not raised before the Adjudicating Authority nor before the Commissioner (Appeals) and the Appellants were raising this issue for the first time before the Tribunal. It is also submitted that once the Appellant has submitted to the jurisdiction of the Assistant Commissioner, therefore, now the Appellant cannot raise this issue at this stage.

4. We find that issue of jurisdiction is a legal issue and can be raised at the Appellate stage also. The issue of jurisdiction is a valid issue in view of the decisions relied upon by the Appellants. We find that the import is made in 2007 and there is still time to issue a proper Show Cause Notice if so required. The issue of jurisdiction is not raised before the lower authority, hence there is no finding on this issue. In these circumstances, as we find that appropriate opportunity is to be given to

the Revenue to assist the Adjudicating Authority to decide the issue of jurisdiction. In these circumstances, without going into the merits of the case, the impugned order is set aside and the matter is remanded to the Adjudicating Authority to decide the issue of jurisdiction as well as other issues, ~~in case~~. In case ~~after affording an opportunity of hearing to Appellant~~, the adjudicating authority found the lack of jurisdiction, the Revenue is at liberty to issue ~~the~~ fresh notice in accordance with law and decide the matter. The Appeals are disposed of by way of remand.

(Dictated & pronounced in open Court)

(S.S. Kang)
Vice President

(Mathew John)
Member (Technical)

RM