16

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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/282, 667 /2006 - CU[DB], C/M/97/2009 Date **23/08/2011**

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

To :
SH.VINOD KUMAR GARG, PARTNER
M/S.CLASSIC WOOL & FIBRES, VILLAGE & P.O.DAD,
PAKHOWAL ROAD, LUDHIANA (PUNJAB)
SH.VINOD KUMAR GARG, PARTNER Appellant

Vs

C.C.E. LUDHIANA **MISC. ORDER NO.C/190/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/365-366/ 2011 CU[DB]** dated 12.08.2011 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. LUDHIANA
CENTRAL EXCISE HOUSE, 'F'
BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult **MR. K.K ANAND**
A-5,BASEMENT,LAJPAT NAGAR-III,
NEW DELHI-24.
MR. KAMALJEET SINGH,
J-144, PATEL NAGAR-I,
GHAZIABAD.

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. MR. HARPREET SINGH,
3553/3, CHEEMA PARTK,
GANDHI COLONY, MODEL GRAM,
LUDHIANA.

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 282 & 667 of 2006 with Customs/ Misc. Application No. 97 of 2009

[Arising out of Order-in-Original No. 62/Ldh/2005 dated 13.1.2006 passed by the Commissioner of Customs & Central Excise, Ludhiana, Punjab]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, 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? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

Shri Vinod Kumar Garg, Partner
Shri Harpreet Singh
Appellants

Vs.

Commissioner of Customs
Central Excise, Ludhiana
Respondent

Appearance:
Shri K.K. Anand and Shri Kamaljeet Singh , Advocates for the Appellants
Shri Sonal Bajaj, SDR for the Respondent

CORAM:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Mathew John, Member (Technical)

Date of Hearing/decision : 03.08.2011

Misc order No. C/190/11

Final **ORAL ORDER NO.** C/365-366/11

Per Mathew John (for the Bench):

This proceeding is for deciding two appeals, but we notice that the impugned order was passed against 4 noticees one was M/s. Classic Wool & Fibres and the second party was Shri Harpreet Singh, partner of M/s. Classic Wool & Fibres and third party was Shri Vinod Kumar Garg, partner of M/s. Classic Wool & Fibres and 4th party was Shri Amarjit Singh who is father of Shri Harpreet Singh and signed certain guarantees which are relevant for the proceedings. M/s. Classic Wool & Fibres against whom the demand has been confirmed and Shri Amarjit Singh against whom the penalty of Rs.10,000/- under Section 117 of the Customs Act was imposed under the impugned order are not in appeal.

2. When the appeals were taken up for hearing, the counsel of Shri Harpreet Singh pointed out that the impugned order has been passed in violation of principles of natural justice since show cause notice and relied upon documents were not served on Shri Harpreet Singh and he did not have an opportunity to submit his defence before the adjudicating authority. On this issue, the learned DR submits that the

notice to Shri Harpreet Singh was pasted on the factory gate of M/s. Classic Wool & Fibres which was the last known address and which factory was lying closed at the time of issue of show cause notice and therefore, it should be taken as a proper service. He also points out that the notice had gone to Shri Amarjit Singh at his residence which is the house in which Shri Harpreet Singh also resides, and therefore, the contention that notice was not served is not sustainable.

3. The counsel for Shri Harpreet Singh further submits that when the department knew his residential address and when they found the factory closed, they should have served it at his residence so that he had an proper opportunity to defend his case. He further submits that when the impugned adjudication order was passed, the department served the order at his residence also because of which he came to know about the order ~~has~~ and he has filed this appeal.

4. We have considered the arguments made from both sides and we find that the department has not made best possible efforts in serving the show cause notice. So it is appropriate that Shri Harpreet Singh may be given an opportunity for giving his defence so that the matter is decided after hearing his defence arguments. Counsel of Shri Harpreet Singh undertakes that he will not raise the technical issue of time bar for issue of show cause notice and he is willing to reply to the show cause notice if opportunity is given. Considering the submission, we consider the matter should go back to the adjudicating

authority for deciding the matter afresh after complying with principles of natural justice.

5. The counsel of Shri Vinod Kumar Garg submits that though the show cause notice and the Adjudication order treated him as a partner of M/s. Classic Wool & Fibres, ~~but~~ he was not a partner. At the time of registration of the firm, it was a ~~the~~ proprietary concern of Shri Harpreet Singh and the Revenue has relied upon the partnership deed dated 8.2.2000 to say Vinod Kumar Garg became a partner from that date. However, the Counsel says that the partnership deed was not given effect to and there is no material to show that he had acted as a partner. The Counsel has also filed Misc. application to bring on record certain evidence to show that the concerned firm was in fact a proprietary concern even after 8.2.2000 and was treated by government authorities accordingly. Since the entire matter is being remanded for de novo consideration, we consider it proper to order that Shri Vinod Kumar Garg should also be allowed to produce additional evidence that he want to rely upon to canvass the issue that he was not the partner of the said concern.

6. Therefore, the impugned order is set aside in so far as it relates to Shri Harpreet Singh and Shri Vinod Kumar Garg and the matter is remitted to the adjudicating authority for a fresh consideration in the matters relating to these two parties after complying with the principles of natural justice.

5. Both the appeals as also Misc. application filed on behalf of the Vinod Kumar Garg stands disposed of.

(Archana Wadhwa)
Member(Judicial)

(Mathew John)
Member(Technical)

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