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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/189 /2011 - CU[DB] Date **03/10/2011**

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

To :
M/S RAJIV SURI, 1050, SECTOR-21C,
FARIDABAD, (HARYANA)

M/S RAJIV SURI, Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/432/ 2011 CU|DB|** dated 27.09.2011 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. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE,
NEAR I.G.I. AIRPORT,
NEW DELHI 110037.

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,
NEW DELHI – 110 024.

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 (Harvana)
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)

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

Customs Appeal No. 189 of 2011

[Arising out of Order-in-Appeal No. 3/POLICY/VKG/2011 dated 10.2.2011 passed by the Commissioner of Customs(Import & General)), New Delhi]

For approval and signature:

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, 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? : 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

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Rajiv Suri Appellants

Vs.

Commissioner of Customs (Import & General) New Delhi Respondent

Appearance:
Shri Piyush Kumar, Advocate for the Appellants
Shri N. Pathak, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing/decision : 13.09.2011

Final **ORAL ORDER NO. C/ 432/11**

Per Archana Wadhwa (for the Bench):

The present appeal is against the suspension order passed by the Commissioner of Customs vide which he has suspended the appellants CHA licence, after giving post decision hearing to the appellants.

2. It is seen that the appellants filed Bill of Entry dated 22.11.2010 for clearance of sanitary pads on behalf of M/s. A & M Impex House, New Delhi. Examination of containers reveal that 32 cartons of leather bags were stocked in the rear part of the container. Investigations were conducted and statements of various persons were recorded. Without going into the details of such investigation and recordings, it is seen that proceedings were initiated against the importers as also against the present CHA. ~~Thus,~~ the said proceedings resulted in passing of the order by Additional Commissioner on 15.12.2010 resulting in imposition of penalties of Rs. One lakh on the present CHA.

The said filing of Bill of Entry by the CHA, mis-declaring the goods on behalf of the importer and order of the Additional Commissioner imposing penalty of Rs. One lakh on the CHA is the basis leading to suspension of his licence.

3. Learned Advocate appearing on behalf of the appellants submits that the ~~said~~ order of the Additional Commissioner was appealed against before the Commissioner (Appeals) wherein he, vide his order-in-appeals dated 23.2.2011 set aside the penalty of Rs. One lakh imposed

on the appellant CHA. Thereafter the original adjudicating authority has also passed the order on 23.2.11 vide which the deposit of Rs.One lakh made by the appellants was refunded to him. He also draws our attention to the observations made in the said order of the Assistant Commissioner indicating that the order in appeal passed by Commissioner (Appeals) stands accepted by the Revenue and no further appeal has been filed against. As such submits the learned Advocate that the appellants having been exonerate from the charges of mis-declaration etc., the present impugned order suspending his licence is not justified.

4. After hearing the learned DR and after going through the developments in the case, we agree with the learned advocate that when the sole basis of the suspension, i.e. earlier proceedings leading to imposition of penalty on the appellant stand set aside by the higher appellate forum, nothing survive for the suspension of the licence. We, accordingly, set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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