14

TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/144-145 /2011 - CU[DB], C/STAY/1055, 1062/2011 Date **18/10/2011**

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

To :
C.C. ICD, TUGHLAKABAD,

NEW DELHI 110020.

C.C. (ICD) NEW DELHI Appellant

Vs

M/S M. K. Y. ENTERPRISES PVT. LTD. **STAY ORDER NO.C/314-315/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/442-443/ 2011 CU[DB]** dated 12.10.2011 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
M/S M. K. Y. ENTERPRISES PVT. LTD.
404, SHYAM CHAMBER, 2944 BHAGATR
SINGH STREE NO. 3, CHUNAMANDI,
PAHARGANJ, NEW DELHI.

2. Adv. / Consult MR. PREM RANJAN, ADV.
6/33, VIKRAM VIHAR, LAJPAT NAGAR-IV,
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 (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,
West Block No. 2, R.K. Puram, NEW DELHI

COURT-IV

C/Stay/1055 & 1062/2011 in &
Custom appeal No. 144-145 of 2011

[Arising out of Order-in-Appeal No. CC(A)Cus./ICD/233/10 & CC(A)Cus./ICD/234/10 both dated 30.12.2010 passed by the Commissioner of Customs (Appeals), New Delhi]

Date of hearing/decision: 11th October, 2011

For approval and signature:

Hon'ble Shri Ashok Jindal, Judicial Member;
Hon'ble Shri Mathew John, Tecnnical Member

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?	

C.C. (ICD), New Delhi — Appellant

Vs.

M/s. M.K.Y. Enterprises Pvt. Ltd., — Respondents

Present for the Appellant : Shri Sunil Kumar, D.R.
Present for the Respondent : Shri Prem Ranjan, Advocate

Coram: Hon'ble Shri Ashok Jindal, Judicial Member
Hon'ble Shri Mathew John, Technical Member

Stay order No. C/314-315/11

FINAL ORDER NO. C/442-443/11 **DATED** 12.10.11

Per Ashok Jindal:

Revenue is aggrieved from impugned order wherein enhancement of value has been set aside.

2. Facts of the case are that the respondents imported PP Spun (Filter Tube) parts through Bills of Entry. The adjudicating authority enhanced the value of goods and the goods were got released by the respondent on payment of duty on enhanced value after accepting the value addition. The respondents filed appeals before the first appellate authority challenging enhancement of value of the impugned goods under these Bills of Entry. The Commissioner (Appeals) held that enhancement has been done without any basis relying upon decision of Hon'ble Apex Court in the case of Eicher Tractor, reported in 2000 (122) ELT 321 (S.C.) He set aside the adjudication order enhancing the value without assigning any reason thereof. Aggrieved from the said orders, Revenue is in appeal

3. Shri Sunil Kumar, learned D.R. submitted that the adjudication was done in the presence of CHA of the respondents who accepted the enhancement of value and did not ask for any speaking order. Even thereafter they did not ask for any speaking order for enhancement of value. Therefore, the Commissioner (Appeals) has not gone into the facts of the case and simply set aside the order. Therefore, the matter needs examination at the end of the Commissioner (Appeals) by giving opportunity to the department to produce

evidence on which basis the value of the impugned goods has been enhanced.

4. Considering the fact that the issue involved is in narrow compass and with the consent of both sides after granting stay of operation of the impugned order, we find that the appeals themselves can also be disposed of at this stage itself. Therefore, we took up the appeals for disposal.

5. Since the impugned order has been passed without examining the reports of the Revenue on which basis the value of impugned goods has been enhanced it is a clear violation of principle of natural justice. Therefore, we agree with the request of learned D.R. to send back both the appeals to the Commissioner (Appeals) to decide the issue afresh after giving reasonable opportunity ~~of~~ to both sides to present their case. We order accordingly. Revenue is directed to give copies of evidences on the basis of which value of the impugned goods has been enhanced. After hearing both sides and examining the record on which basis value has been enhanced, the Commissioner (Appeals) shall pass order within two months of receipt of this order. Accordingly, appeals as well as stay applications are disposed of in above terms.

(Dictated & pronounced in the Open Court.)

(ASHOK JINDAL)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK