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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/535 /2010 - CU[DB], C/M/501/2011 Date **18/10/2011**

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

To :
C.C.(PREVENTIVE)
NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT,
NEW DELHI 110037.
C.C.(PREVENTIVE) Appellant

Vs

M/S ABHI INTERNATIONAL **MISC. ORDER NO.C/252/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/444/ 2011 CU[DB]** datedP 14.10.2011 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 ABHI INTERNATIONAL
5, NEW GAUTAM NAGAR, BASTI BAWA
KHEL, JALANDHAR, PUNJAB.

2. Adv. / Consult MR. SUDHIR MALHOTRA,
13-R, HUKUM CHAND COLONY,
NEAR DAV COLLEGE, JALLANHDAR.

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. 535 of 2010
Customs Misc. Application No. 501 of 2011

[Arising out of Order-in-Appeal No. CCA/Prev/59/2010 dated 30.6.2010 passed by the Commissioner of Customs(Appeals), 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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Commissioner of Customs (Prev) New Delhi — Appellants

Vs.

M/s. Abhi International — Respondent

Appearance:

Shri R.K. Gupta, DR for the Appellants
Shri Sudhir Malhotra, Advocate for the Respondent

CORAM:

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

Date of Hearing/decision : 5.10.2011

Final **ORAL ORDER NO.** 94441/11

Per Archana Wadhwa (for the Bench): M.O. NO. C/252/11

After allowing the early hearing application filed by the respondents, we proceed to decide the appeal itself with the consent of both sides as a short issue is involved. Accordingly, we heard both sides.

2. Commissioner (Appeals) vide his impugned order has remanded the matter to the original adjudicating authority by observing as under:

> "The issue here is the classification of the impugned goods. It is seen that the Adjudicating authority has admitted in the impugned order that the goods in question were threaded rods of 19 -20 of iron & steel but classified as parts of Dumping machines under CTH 84313990. But the Adjudicating Authority has not brought out on record any expert opinion or any catalogue to prove his decision. On the other hand, the Appellant has submitted a Certificate dated 7.6.2010 from Chartered Engineer M/s. EEPCINDIA as per which the impugned which were threaded rods of 19-20 feet length cannot be used as parts of machine as such and that it is to be sold as per requirement. The Adjudicating Authority did not requisitioned services of any

Chartered Engineer to ascertain the actual position. In such a case, the goods cannot be assumed to be parts of machines and classify them accordingly. Therefore, the issue needs to be revisited by the Adjudicating Authority in order to arrive at correct classification of the goods."

3. The revenue's only grievance against the above order of the Commissioner (Appeals) is that he has no powers to remand the matter. However, we find that the issue involved is a technical issue of classification of the threaded rods of iron and steel. The assessee had produced a certificate in support of his claim of classification. The observation of the Commissioner (Appeals), while remanding the matter, require the Assistant Commissioner to obtain the services of an expert i.e. Chartered Engineer. We find that such an exercise can only be ~~given~~ done ~~only~~ at the level of original adjudicating Authority. As such, without going into the legal question as to whether the Commissioner (Appeals) has powers or not and by taking into consideration the fact that the Tribunal can itself remand the matter, we find it fit to direct the original Adjudicating Authority to redecide the issue of classification after obtaining the Chartered Engineer's opinion.

4. In view of the above, we find no merits in the Revenue's Appeal. Accordingly, the same is rejected.

5. Inasmuch as the live consignment is involved, we expect the original Adjudicating Authority to decide the issue as soon as possible and preferably within one month from today.

(Pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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