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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/329 /2011 - CU[DB], C/S/1987/2011 Date **11/11/2011**

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

To :
M/S P S PRESS SERVICES PVT.LTD
B-28, SECTOR-59, NOIDA(UP)

M/S P S PRESS SERVICES PVT.LTD Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) **STAY ORDER NO.C/393/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/482/ 2011 CU[DB]** dated 03.11.2011 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.MOHAN LAL, ADV.
B-67, FLATTED FACTIRES COMPLEX,
OKHALA PHASE-III, DELHI-110020

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

Date of Hearing:31.10.2011
Date of Decision:31.10.2011

Customs Stay No.1987 of 2011 in & Appeal No.329 of 2011

M/s. P.S. Press Services Pvt. Ltd. Appellant

Versus

CC, New Delhi Respondent

Appearance: Rep. by Shri Mohan Lal, Advocate with Ms. Vidisha Lal, Advocate for the appellant.
Rep. by Shri Amrish Jain, SDR for the Revenue.

CORAM : **Hon'ble Shri D.N. Panda, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Stay order No. C/393/11
Final Order No. C/482/11 Dated : 31.10.2011

Per. D.N. Panda

Ld. Counsel submits that as against the goods exported, the appellant has not claimed DEPB credit in terms of letter dated 9.10.2009 (refer page 60 of the appeal folder) and that shall not also be claimed in future, which was submitted before the authorities soon after the shipment was made though by Shipping Bill dated 29.09.2003 (refer page 15 of the appeal folder). The goods ~~i.e.~~ in question when could be ascertained as not eligible to DEPB credit, the appellant acted bona fide and has forgone its claim.

2. It was also submitted by ld. Counsel that the goods exported were cleared in terms of ARE-I Return dated 26.09.2009 making fair disclosure of the description of the goods (refer page 31). There was a proper declaration of the goods in Shipping Bill as that was mentioned in ARE-I Return without any deviation.

3. By show cause noticed ated 16.07.2010, Revenue mis-conceived that the appellant made mis-declaration of the goods. But that was not so. Accordingly, neither confiscation is desirable nor also redemption fine is imposable. So also for no contravention of law made penalty is imposable.

4. On the above premise, the appellant prays for waiver of the requirement of pre-deposit of duty and also prays to dispose of the appeal since the matter in controversy is confined to above aspects only without any further evidence to be tested.

5. Revenue also agrees for disposal of the appeal since the matter is confined to aforesaid limited dispute.

6. Waiving requirement of pre-deposit, we allow the stay application and proceed for disposal of the appeal by this common order.

7. Submissions made by ld. Counsel is contradicted by Revenue submitting that the appellants knowingly mis-declared the goods as books although those were bingo ticket books and cloak room ticket books. Such mis-delcaration warranted confiscation followed by imposition of redemption fine and penalty although no DEPB claim was made. Therefore, orders passed by Authority below was proper.

8. Heard both the sides on merits of the appeal.

9. We have perused the appellant's conduct beginning from the ARE-I Return stage till the shipments. It appears that whatever the goods were declared in ARE-I Return were meant to be exported. That is verifiable from the shipping bill. Therefore, appellant's contumacious conduct is absent to upheld adjudication in toto.

10. In the course of hearing, ld. Counsel for the appellant again reiterated that his client is not going to make any claim of DEPB credit in future, which has also been informed to the authorities by letter dated 9.10.2010, which is apparent from para 2 of the adjudication order. When DEPB claim has been foregone, we direct that the authorities not to entertain such claim, by any means, in future, against the shipping bills in question in this appeal.

11. We have noticed that the appellant's approach to the export does not reflect mis-descripiton of the goods intended to be exported.

Therefore, confiscation of the goods was unwarranted and no redemption fine is imposable.

12. Sofar as the aspect of penalty is concerned, we have noticed that the appellant although was aware that the goods of the description mentioned in ARE-I Return and shipping bill do not enjoy the DEPB credit, had made a claim not acceptable to law. Therefore, to deter such practice, we consider it proper that penalty of Rs.50,000/- (Rupees Fifty Thousand only) would be proper to meet the end of justice. We order accordingly and modify adjudication order to this extent.

13. In the result, stay petition is disposed of and the appeal is allowed to the extent indicated above.

[Dictated and pronounced in the open court]

(D.N. Panda)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.