14

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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/357 /2011-360 /2011 - CU[DB], C/STAY/2094-2097/2011 Date **12/12/2011**

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

To :
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.

C.C. (ICD) NEW DELHI Appellant

Vs

PERGO INDIA PVT. LTD. **STAY ORDER NO.C/412-415/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/508-511/ 2011 CU[DB]** dated 08.12.2011 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
PERGO INDIA PVT. LTD.
5/E, BLOCK, LSC, MASJID MOTH,
GREATER KAILASH-II, NEW DELHI.

2. Adv. / Consult Mr. Vivek Sharma
C/o Pergo India Pvt. Ltd.
5/E, Block, LSC, Masjid Moth
G.K. II, New Delhi.
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 AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:05.12.2011
Date of decision:05.12.2011

Customs Stay No.2094-2097 of 2011 in
Appeals Nos.357-360 of 2011

[Arising out of Order-in-Appeal No.CC(A)Cus./ICD/102 to 105/11 dated 22.03.2011 passed by the Commissioner of Customs (Appeals), New Delhi].

CC, New Delhi — Appellant

Vs.

M/s. Pergo India Pvt. Ltd. — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see 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

Appearance: Rep. by Shri R.K. Verma, DR for the appellant.
Rep. by Shri Vivek Sharma, Advocate for the respondent.

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

Final Order No. C/508-511/11/Dated:05.12.2011
Stay order No: S/412-415/11

Per Archana Wadhwa:

After rejecting the stay petition filed by the Revenue, we proceed to decide the appeal itself, inasmuch as the Commissioner (Appeals) has remanded the matter to the lower authorities on the ground that the respondent had submitted all the requisite documents at the time of filing of the refund claim in terms of Notification No.102/2007-Cus dated 14.09.2007, for refund of Special Additional Duties. He has also observed that the adjudicating authority has not issued any show cause notices or has not given any opportunity to the respondent to be heard by him. He has held that as the entire case is dependent upon the relevance of the requisite documents, the assessee should be given an opportunity to put-forth his case. Revenue's only grievance against the order of the Commissioner that he was not having any powers to remand the matter.

2. Without going to the above legal issue, we find that admittedly the impugned order was passed by the original adjudicating authority in violation of the principals of natural justice. Inasmuch as, the relevant documents are required to be verified and scrutinized, which can only be done at the level of the original adjudicating authority, we deem it fit to

remand the matter to the original adjudicating authority. We order accordingly. Revenue's appeal is disposed of in the above terms.

[order dictated & pronounced in open court]

(Archana Wadhwa)
Member (Judicial)

(Rakesh Kumar)
Member (Technical)

Ckp.