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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/STAY/3458/2010-3461/2010 - CU In
C/606 /2010-609 /2010 - CU[DB]

Date **03/01/2012**

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

To : 1. M/S MEENU GIYAL,
2. M/S DELTA OVERSEAS,

PLOT NO. 3, VILLAGE KHAKAT,
G.T. ROAD, LUDHIANA. (PUNJAB)

M/S DELTA OVERSEAS, Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR **STAY ORDER NO.C/473-476/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/535-538 2011 CU[DB]** dated 23.12.2011 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
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL
REVENUE BUILDING, THE MALL,
AMRITSAR 143001.

2. Adv. / Consult
MR.K.K. ANAND,ADV
A-103, DEFENCE COLONY,
NEW DELHI-24

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
14. M/S HAPPY SALES CORPORATION,
15. M/S M.K. INTERNATIONAL,
NIRMAL MARKET, OSWAL STREET MILLER GANJ,
LUDHINA (PUNJAB)

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 606 -609 of 2010
Customs Stay Application No. 3458-3461 of 2011

[Arising out of Order-in-Original No. 06/Cus/2010 dated 2.8.2010 passed by the Commissioner of Customs, Amritsar]

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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M/s. Delta Overseas — Appellants
Ms. Meenu Goyal
M/s. Happy Sales Corporation
M/s. M.K. International

Vs.

Commissioner of Customs — Respondent
Amritsar

Appearance:
Shri K.K. Anand, Advocate for the Appellants
Shri R.K. Verma, DR for the Respondent

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

Date of Hearing/decision : 9.12.2011

Final **ORAL ORDER NO. C/535-538/11**
Stay order No. C/473-476/11

Per Archana Wadhwa (for the Bench):

Vide his impugned order, Commissioner has denied DEPB claim of the appellant totally amounting to Rs.13,14,357/- and has accordingly confirmed the demand against M/s. Delta Overseas along with imposition of penalty of identical amount. In addition, an amount of Rs.53 lakhs belonging to the said appellant stands absolutely confiscated. Further, penalties of varying amounts stands imposed upon the other applicants.

2. Inasmuch as we find that the Indian currency to the extent of Rs.53 lakhs belonged to Delta Overseas stands absolutely confiscated by the Commissioner and as we further note that the impugned order stands passed by the Commissioner in violation of principles of natural justice, we waive the condition of pre-deposit of dues confirmed against and imposed upon the applicant and proceed to decide the appeal itself.

3. It is seen that the period for issuance of show cause notice was extended by the Commissioner in terms of provisions of Section 110 (2) of the Customs Act, the matter was taken upto Tribunal, who upheld the extension of time. Thereafter the Tribunal's order was appealed against before the Hon'ble High Court of Punjab & Haryana, who vide their order dated 15.3.2010 directed the Commissioner to consider the applicant's grievance on the point of limitation and to first decide the question of limitation raised by the applicant.

4. In the present impugned order, Commissioner has admittedly first dealt with the limitation issue and thereafter decided the issue on merits. Further, it is seen that the appellant had not filed any reply to the show cause notice inasmuch as they were contesting the issue on limitation. In addition, they were also arguing for supply of relied on documents. While dealing with the said plea of the appellant, the Commissioner held as under:-

> "*45. Now I take up the instant SCN for adjudication as a whole. As already noted at para 34 above, the noticees No.1 to 5 have failed to submit any detailed reply to allegations contained in the instant SCN. They have also taken the plea that relied upon documents were not received by them. In this regard, I note that they have been informed by this office as well as by DRI several times to collect relied upon documents from their office but the Noticees have deliberately avoided collecting documents. As such, it can be safely concluded that the requirement of natural justice have been fully met in respect of Noticee 1 to 5 while adjudicating the instant SCN. As such, I shall proceed to decide the case on the basis of facts and evidences available on record.*"

5. As is clear from the above, the present impugned order stands passed by the Commissioner without the~~ir~~re being reply to the show cause notice. As regards, the appellants plea for supply of relied upon documents, he has observed that appellants were informed to collect the relied upon documents from the office which they have not done. However, we note that the fact remains that there was no ~~evidence of filing of~~ reply filed by the appellants, in which case it is difficult to appreciate the disputed issue. As such, we find it fit to set aside the impugned

order on the said short ground itself and remand the matter ~~to lower~~ for fresh decision after supplying the relied upon the documents to the appellants and giving a reasonable opportunity of defending their case. We, accordingly, set aside the impugned order. The documents would be supplied to the appellants as soon as possible and the reply to the notice would be filed by the appellant within a period of 6 weeks from the date of receipt of the documents. Thereafter, the Commissioner would adjudicate after affording an opportunity of personal hearing to the appellants.

6. The stay petition as also appeal gets disposed of in the above manner.

(pronounced in the open court)

(Archana Wadhwa)
Member(Judicial)

(Rakesh Kumar)
Member(Technical)

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