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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/S/2847/2011 IN C/531 /2011 - CU[DB] Date **03/01/2012**

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

M/S ANKIT ELECTRONICS, **STAY ORDER NO.C/494/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/556/ 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
M/S ANKIT ELECTRONICS,
11, OLD LAJPAT RAI MARKET,
DELHI. 110006

2. Adv. / Consult MR. PIYUSH KUMAR,
B-25, LAJPAT NAGAR-III,
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)

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

Customs Appeal No. 531 of 2011
Customs Stay Application No. 2847 of 2011

[Arising out of Order-in-Appeal No. CC(A)Cus/ICD/192- 206/2011 dated 25.4.2011 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 (ICD) New Delhi — Appellants

Vs.

M/s. Ankit Electronics. — Respondent

Appearance:

Shri K.P. Singh, DR for the Appellants
Ms. Reena Rawat, Advocate 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

Stay order No. C/494/11

Final **ORAL ORDER NO.** C/1556/11

Per Archana Wadhwa (for the Bench):

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We propose to dispose of the stay petition as also appeal by a common order as a short issue is involved.

2. As per facts on record, the respondents filed thirteen Bills of Entry on various dates for the clearance of Ferrite magnet & Ferrite magnet rings declaring the value based upon the invoices raised by the supplier. The assessing authority did not agree with the declared value and enhanced the same. The Bill of Entry was accordingly assessed.

3. The said assessment was challenged by the respondents before Commissioner (Appeals), who observed that inasmuch as the assessing authority has not passed a speaking order giving reasons for rejection of the declared price, he set aside the assessment order and directed the assessing authority to pass speaking order within a period of 15 days.

4. Being aggrieved with the said order, Revenue has challenged the same on the ground that value was enhanced as per instructions of CBEC vide Circular No. 91/2003-Cus dated 14.10.2003 which are as follows:

"at the request of the importer, the proper officer is required to intimate in writing, the grounds for doubting the truth the accuracy of the declared value and provide a reasonable opportunity of being heard, before taking a final decision. However, it may not be necessary to issue speaking orders in all such cases where enhancement of value has been resorted to with the consent of the importers"

Accordingly the Revenue has contended that inasmuch as the appellants cleared the goods on enhanced value, they were precluded from contesting the same.

5. We however, do not agree with the above contention of the revenue. The said circular itself makes it clear that proper officer is required to intimate in writing the grounds for enhancing the value and a reasonable opportunity is required to be given to the importer before the final decision is taken . It is only in those cases where both the sides agree to resort to enhancement of value. That no orders are required to be passed. Merely because the importer has cleared the goods at enhanced value to save the demurrage charges or otherwise, by itself, does not mean that the importer is consenting to enhance the value. It is right of the importer to contest the enhancement and fact of clearance of goods, cannot preclude the importer from exercising the right of appeal. As such, we find no merit in the revenue's appeal.

6. Inasmuch as the Commissioner (Appeals) has remanded the matter to the original adjudicating authority for deciding the assessable value of the imported goods, by following the principles of natural

justice, we upheld the impugned order and direct the original adjudicating authority to do the needful.

6. 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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