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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. ST/902 /2011-924 /2011 - CU[DB] Date **10/04/2012**
ST/S/1908-1930/11, ST/COD/205-227/11

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

To :
C.C.E. ROHTAK

SCO NO,6 SECTOR 1, ROHTAK.

C.C.E. ROHTAK Appellant

Vs

M/S JAY GEE OVERSEAS PVT LTD Respondent

I am directed to transmit herewith a certified copy of **Final order No.ST/A/273-295 2012 CU[DB]** dated 29.03.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Stay Order No ST/S/335-357/12 &
Misc Order No ST/M/84-106/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
M/S JAY GEE OVERSEAS PVT LTD
SECTOR-29, HUDA , PANIPAT.

2. Adv. / Consult mr Bipin Garg, Adv
B-1/1289-A Vasant Kunj
New Delhi-70

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-3
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)

M/S HAND FAB HOME
180 SECTOR-25,PART-II, HUDA PANIPAT.

M/S SHRI KRISHAN HOME FURNISHING
MALIK PALACE LANE, SECTOR-29,HUDA, PANIPAT.

M/S VENUS EXPORTS
KRANTI NAGAR,G.T.ROAD, PANIPAT.

M/S AKASH INTERNATIONAL
PASINA, KALAN ROAD, PANIPAT.

M/S GUPTA TEXTILES
GOHANA ROAD, PANIPAT.

M/S INTERNATIONAL BREAD MAKER
193 SECTOR-25,PART-II, HUDA PANIPAT.

M/S HANDFAB HOME
180,SECTOR-25,PART-II, HUDA,PANIPAT.

M/S JAY GEE OVERSEAS PVT LTD
SECTOR-29, HUDA PANIPAT.

M/S LINEN RUGS
VIKAS NAGAR,TEHSIL TOWN,PANIPAT.

M/S SPARTAN TRENDS
NEW GRAIN MARKET, G.T.ROAD,PAIPAT.

M/S AALISHAN TEXTILES
GOHANA ROAD, PANIPAT.

M/S ANAND INTERNATIONAL
191-192, SECTOR-25,HUDA, PANIPAT.

M/S ANAND INTERNATIONAL
191-92, SECTOR-25,PART-II,HUDA,PANIPAT.

M/S AKASH INTERNATIONAL
PASINA KALAN RAOD,PANIPAT.

M/S INDO DANE TEXTILES
KABRI ROAD,PANIPAT.

M/S RIVIERA HOME FURNISHINGS PVT LTD
BEHIND KHADI ASHRAM,G.T.ROAD,PANIPAT.

M/S SHIV SHAKTI EXPORTS
P.O.BOX 180,PASSIN KALAN ROAD,PANIPAT.

M/S ESS KAY ENTERPRISES
184 SECTOR-25,,PART-II,HUDA,PANIPAT.

M/S MITTAL INTERNATIONAL
KADIYAN CHOWK,SECTOR-29,PART-II,PANIPAT.

M/S PALIWAL OVERSEAS PVT LTD
PALOWAL NAGAR, G.T.ROAD,PANIPAT.

M/S THE WEAVELAND
PLOT NO 8 SECTOR 25,PANIPAT

M/S WEAVELAND
PLOT NO 8, SECTOR 25,PANIPAT.

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH
Court No.3
ST/COD/205-227/11 in Appeal No.ST/902-924/2011

ST/Stay/1908-1930/11 in Appeal No.ST/902-924/2011
(Arising out of OIA No.470-492/BK/RTK/2010 dt.30.11.10 passed by the CCE(A), Delhi-III, Gurgaon.

Date of Hearing/Decision: 29.03.2012

For approval and signature:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

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?	Yes
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

CCE, Rohtak — Appellant
Vs

M/s.Jay Gee Overseas Pvt.Ltd. — Respondent
M/s.Aalishan Textiles
M/s.Venus Exports
M/s.International Break Maker
M/s.HandFab Home
M/s.Jay Gee Overseas Pvt.Ltd.
M/s.Akash International
M/s.HandFab Home
M/s.Spartan Trends
M/s.Gupta Textile
M/s.Mittal International
M/s.Shri Krishan Home Furnishing
M/s.Shiv Shakti Exports
M/s.Indo Dane Textile
M/s.Linen Rugs
M/s.Anand International
M/s.Ess Kay Enterprises
M/s.Weaveland
M/s.Paliwal Overseas (P) Ltd.
M/s.Weaveland
M/s.Akash International
M/s.Reviera Home Furnishing
M/s.Anand International

Present for the Appellant: Shri K.P.Singh, DR
Present for the Respondent: Shri Mayank Garg,Advocate

Coram: Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

M.O. No ST/M/84-106/12-Cus.

Final **ORDER NO.** ST/A/273-295/12-Cus.

S.O. No. ST/S/335-357/12-Cus.

PER: ARCHANA WADHWA

The delay in filing the present appeal by the Revenue is more than 48 days which stands attributed to administrative reasons. Learned SDR appeared for the Revenue submits that the impugned order disposed of 23 appeals and it took sometime on the part of the officers to collect the information in respect of each and every appeals. We condone the delay and allow the COD applications.

2. After rejecting the stay petitions filed by the Revenue for staying the operation of the impugned of the Commissioner (Appeals), we proceed to decide the appeals, inasmuch as a short issue is involved. After hearing both sides, we find that the adjudicating authority has rejected the refund claim filed by the respondents. Being aggrieved with the said order, the respondent filed the appeal before the Commissioner (Appeals). The appellate authority without going into the merits of the case, allowed the appeals on simpliciter ground that the adjudicating authority has not issued show cause notice before rejecting the refund claim. He accordingly set aside the impugned order of the original adjudicating authority.

3. On going through the impugned order, we find that he has not discussed the merit of the refund claim, he has simply observed that in accordance with principle of natural justice, the adjudicating authority should have issued show cause notice before rejecting the refund claim.

4. The Revenue's grievance as represented through Shri K.P.Singh, learned SDR, is that the Assistant Commissioner had disclosed the reason for such rejection before passing of the impugned order and had given effective opportunity of personal hearing to the respondent. As such, it can be safely concluded that the principle of natural justice stands duly observed by the adjudicating authority. He submits that mere fact of non issuance of show cause notice by itself, cannot be made a ground for setting aside the impugned order.

5. Learned Advocate appearing for the respondents draws our attention to he order of the Tribunal in the case of CCE, Aurangabad vs. Sidheshwar SSK Ltd.-2011 (274) ELT 141 (Tri.-Mumbai) wherein the appeals filed by the Revenue on identical fact were rejected.

6. After considering the submissions made by both side, we find that the issuance of show cause notices, disclosing the grounds for proposed action, is the basic requirement of law and should be adhered to by the adjudicating authority. However, the question is as to whether the non issuance of show cause notice can be held to be fatal to the Revenue's case or the Revenue should be granted an opportunity to issue show cause notice. We do not agree with the

findings of the Commissioner (Appeals) that non issuance of show cause notice would make the respondent automatically entitle to refund claim, without considering the merits of the case. We have take note of various decisions of the Tribunal where further observed that issuance of show cause notice was the preliminary requirement, the matter stands remanded to the lower authorities for observing such principles of natural justice. As such, while agreeing with the order of the Commissioner (Appeals), that the issuance of show cause notice was mandatory, we do not agree wit the conclusion arrived at by him that non issuance of show cause notice would result in setting aside the order of the lower authorities rejecting the refund claim. We accordingly set aside the impugned order of the Commissioner (Appeals) and remand the matter to the original adjudicating authority to issue show cause notice, disclosing the reasons for proposed denial of refund claim, thus giving an opportunity to the respondents to meet such objection of the Revenue. Further, an opportunity of presenting their case in person would also be afforded to the respondent.

7. The COD applications, stay petitions and appeals get disposed of in the above manners.

(Pronounced in the open court)

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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