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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/9/2012 IN C /1 /2012 - CU[DB] Date **27/04/2012**

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

To :
M/S SAS INTERNATIONAL
117A, SAINIK FARMS, DEFENCE SERVICES
ENCLAVE NEW DELHI. 110062

M/S SAS INTERNATIONAL Appellant

Vs

C.C. (EXPORT) NEW DELHI **STAY ORDER NO.C/S/131/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.**C/A/124/ **2012 CU[DB]** dated 17.04.2012 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. (EXPORT) NEW DELHI
AIR CARGO EXPORT,
NEW CUSTOM HOUSE,
NEW DELHI 110037

2. Adv. / Consult
MR.V. LAXMIKUMARAN
B-6/10, SAFDARJUNG ENCLAVE,
NEW DELHI-110 029

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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
Court No.III

C/ Stay No.9/12, C/Appeal No.1/12

(Arising out of order in original No.Ace/MIJM/72/2010 dated 30.12.10 passed by the Commissioner of Customs & Central Excise, New Delhi)

Date of Hearing: 17.4.2012

M/s SAS International — Applicants

Vs

CC, New Delhi — Respondent

Appeared for the Appellant: Shri B.L. Narasimhan, Advocate
Appeared for the Respondent: Shri K.P. Singh, DR

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

Final ORDER No. C/A/124/12-Cus.
Stay order No. C/S/131/12-Cus.

Per Mathew John:

The appellant had advance authorization license and imported certain raw material after executing bond with the customs authorities regarding duty liability that may arise if the condition of such license is not fulfilled. In respect of 5 licenses issued during the period 2002-05, the department had not received any Export Obligation Discharge Certificate (EODC) issued by DGFT. Therefore, the Revenue issued a show cause notice for invoking the terms of the bond. The show cause notice has been adjudicated ordering recovery of an amount of Rs. 9,26,67,878/- along with interest by invoking the provisions of bond executed by the appellants. Aggrieved by the order of the Commissioner (Appeals), the appellants have filed this appeal.

2. The learned Counsel submits that they did not get any show cause notice and even as per the impugned order, only one opportunity was given for personal hearing. They submitted that they did not get notice regarding such hearing. He further submits that out of the 6 licenses involved in respect of one license, they have now received EODC and in respect of the remaining 5, the process is still going on because there were certain issues relating to policy relaxation for which they had approached the Policy Relaxation Committee. Now such relaxations have come and they have submitted applications for issue of EODC in view of the relaxation given and such EODCs are expected shortly. Therefore, he submits that the order is not maintainable for the reasons that principles of natural justice have not been complied with and also in view of the fact that they have discharged the obligation and what is pending is formal issue of EODC by DGFT.

3. Opposing the prayer, learned AR submits that the EODCs were to be produced within 18 months or 24 months depending on the period when the license was issued and for licenses issued during 2002-05, EODCs were not produced even upto to 2010 and that is the reason why the adjudicating authority took action for enforcing the terms of the bond.

4. We have considered submissions of both sides. There has been delay in producing the EODCs. But we are not able to understand why the show cause notice could not be served on the appellant who has been exporting goods through the same customs station and also in view of the evidence that the appellant has been appearing before the

same officer in connection with other exports. In the circumstances, we do not appreciate the order passed without serving a show cause notice and without personal hearing.

5. Since the order is passed without complying with the principles of natural justice and without appreciating the fact that the DGFT are still considering the issue of EODC, we waive the dues arising from the impugned order for admission of appeal and we take up the appeal itself for hearing because no purpose will be served by keeping this appeal pending in the Tribunal.

6. We set aside the impugned order and remand the matter to the adjudicating authority for serving a show cause notice in respect of the 6 licenses to the appellant and thereafter giving them a personal hearing and complying with principles of natural justice and pass adjudication order afresh.

7. Stay petition and appeal are disposed of in the above terms.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(ARCHANA WADHWA)
Member (Judicial)