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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

Date 24/05/2012

Appeal No. C/STAY/1731/2011-1733/2011 - CU In
C/291 /2011-293 /2011 - CU[DB]

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

To :

1. SH. RAJ KUMAR,
2. SH. RAJNEESH GOYAL,
3. M/S PAWAN INTERNATIONAL,

1370, KRISHNA NAGAR, LUDHIANA (PUNJAB)

M/S PAWAN INTERNATIONAL & OTHERS Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

Stay Order No. 95/151-153/2012

I am directed to transmit herewith a certified copy of **Final order No.C/A/137-139/ 2012 CU[DB]** dated 16.05.2012 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. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult
MR.SAURABH KAPOOR, ADVOCATE
11-YADVINDRA COLONY, THE MALL,
PATIALA 147001

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)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing : 16.5.2012

For Approval & Signature :

Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Custom Stay No. 1731 of 2011 and Custom Appeal No. 291 of 2011

(All appeals arising out of common Order-in-Original No. 10/2011 dated 23.2.2011 passed by the Commissioner of Customs, New Delhi)

M/s Pawan International — Appellant

Vs.

CC (ICD), New Delhi — Respondent

Custom Stay No. 1732 of 2011 and Custom Appeal No. 292 of 2011

Shri Raj Kumar — Appellant

Vs.

CC (ICD), New Delhi — Respondent

Custom Stay No. 1733 of 2011 and Custom Appeal No. 293 of 2011

Shri Rajneesh Goyal — Appellant

Vs.

CC (ICD), New Delhi — Respondent

Appearance:

Appeared for Appellant : Shri Saurabh Kapoor, Advocate

Appeared for Respondent : Shri K.K. Jaiswal, A.R.

CORAM: Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

Stay Order No. CIS/151-153/12-Cus dated............
Final order No. C/A/137-139/12-Cus

Per Archana Wadhwa :

As M/s Pawan International has deposited an amount of Rs.4.00 lakhs out of the total duty of Rs.29,98,900/-, we dispense with the condition of pre-deposit of balance amount of duty and entire amount of penalties imposed upon all the appellants and proceed to decide the appeal itself inasmuch as we find that the impugned order stands passed by the Commissioner in gross violation of principles of natural justice.

2. After hearing both the sides, we would like to re-produce para-9 from the impugned order.

> "9 The Noticees did not forward any written submissions even after the expiry of 30 days time provided them to reply as specified in the said SCN. Hence, the said Noticees were accorded personal hearing on 7.2.2011. The said Noticees appeared for the personal hearing on 7.2.2011 and submitted that they proposed to go before Settlement Commission,, their application is ready and that they would filed within 15 days before 22.2.2011. They added that they have nothing more to add."

3. Ld. Advocate appearing for the appellant submits that they had intention to going to Settlement Commissione but subsequently they changed their mind and wanted to contest the allegations. He draws our attention to a letter dated 22nd Feb. 2011 addressed by the Advocate to the Commissioner of Customs, New Delhi, which is to the effect that inasmuch as serious allegations have been made in the Show Cause Notice, and as they have not received copies of the relied upon documents, they may be given a time of further four weeks from the supply of the documents so as to enable them to file a detailed reply to the Show Cause Notice. The said letter was not taken note of by the adjudicating authority, who proceeded to decide the issue without affording any opportunity to the appellant to contest the allegations and to present their case in person. As is seen from the above paragraph reproduced, we find force in the appellant's contentions. The adjudicating authority has proceeded ahead with the adjudication on the presumption that inasmuch as 15 days period has passed, the appellants must not have approached the Settlement Commissioner. He records in para-11 that inasmuch as the appellant has not substantiated that they have actually submitted such claim before the Settlement Commission, he has no option but to proceed with adjudication of the case. However, the adjudicating authority, before proceeding ahead,

has not given any time to the appellant, as prayed for by them in their letter dated 22nd Feb. 2011 to procure the relied upon documents and to file a detailed reply thereafter. Not only that, no date of personal hearing stands fixed by him before going ahead with the adjudication. As such, we are of the view that there has been gross violation of principles of natural justice, which is not only an empty formality but are required to be adhered to before passing the adjudication orders. We accordingly set aside the impugned orders and remand the matter to the adjudicating authority for fresh decision. Needless to say that the appellants would be provided with all relied upon documents and would be given an effective opportunity of presenting their case before the adjudicating authority, in writing as also in person.

4. Stay petitions and appeals get disposed of in the above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM*