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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/MISC/380/2010 IN C/180 /2010-181 /2010 - CU[DB] Date **24/05/2012**

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

To :
M/S BRIJ & CO.
567, KATRA ISHWAR BHAWAN,
KHARI BAOLI, DELHI-110006

M/S BRIJ & CO. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

Misc. Order No. C(M)107/2012

I am directed to transmit herewith a certified copy of **Final order No.C/A/141-142/ 2012 CU[DB]** dated 15.05.2012 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.H.S.MEW
52 B, UPKAR APPTS, MAYUR VIHAR PHASE EXTN,
DELHI – 110 091

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
14. M/S RADHEY SONS, 367/3,
KATRA HUSSAIN BUX,
KHAR BAOLI, DELHI-110006

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, NEW DELHI

COURT No. III

Misc. Application No.380 of 2010
Customs Appeal No.180-181 of 2010

Date of Hearing : 15.05.2012.

[Arising out of Order-In-Appeal No.CC(ICD)/19-20/2010, dated 19.03.10 issued by CC, New Delhi]

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

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

M/s Radhey Sons & ors. — Appellant
Versus
CC(ICD), New Delhi — Respondent

Coram: Hon'ble Ms. Archana Wadhwa, Judicial Member
Hon'ble Mr. Mathew John, Technical Member

Present for the Appellant - Shri Prem Rajan Kumar, Adv.
Present for Respondent - Shri Amresh Jain, AR

Final **Order No.** C/A/141-142/12-Cus **Dated :**________
Misc order No. C/M/107/12-Cus

Per Ms. Archana Wadhwa:

Misc. Application is for early disposal of the appeal on the ground that the disputed issue has a recurring effect as the appellants are regular importers of Gum Arabic Waste/Rejects which is being levied to CVD by the Customs authorities. Ld.

Advocate also submits that the said issue stands decided in favour of the appellant by a recent judgement of Mumbai Bench of the Tribunal in the case of Jugal Kishore Shivlal.

2. We have gone through the said decision of the Tribunal in the case of Jugal Kishore Shivlal and find that the issue stands decided in favour of the assessee. As such we proceed to dispose of the appeal itself.

3. Accordingly we have heard both the sides.

4. The dispute in the present appeal relates to leviability of CVD on the imported 'Gum Arabic Waste/Rejects'. On going through the order of the Commissioner(Appeals), we find that ~~he~~ she has taken note of the Board's letter F.No.525/2/2007-Cus(TU), dtd. 28.06.07 which clarifies that no CVD is leviable on imported Gum Arabic in raw form. However, she has not follow~~ing~~ed the said clarification issued by the Board on the ground that the same is not ~~cut~~ supported by any Notification, either exempted central excise duty or exempted CVD. As such she has refused ~~the suggestion~~ to follow the said clarification of the Board.

5. An identical issue was considered by the Tribunal in the case of Jugar Kishore Shivlal and vide Final Order No.A/37-38/2012/CSTB/C-I, dtd. 17.01.12, the Bench observed as under:-

> "6. *After going through the contentions of both the sides, we find that in this case the Bills of Entry had been filed by describing the goods as 'Gum Arabic Waste Rejects' and classifying the same under Chapter Heading 1301 2000. The same was assessed holding that the appellant are liable to pay*

CVD on them. While assessing and confirming the liability to payment of CVD, no sample has been drawn and the basis for arriving the CVD is payable was not communicated to the appellant as they have claimed classification under 1301 2000 which covers the goods 'natural gum' and while importing natural gum, as per clarification of CBEC dtd. 28.06.07 there is no CVD leviable on the on the imported 'Gum Arabic'. We find force in the contention of the learned advocate, who has explained how the 'Gum Arabic Waste/Rejects' was obtained and he has explained that while obtaining natural gum, a hole has to be made in the tree and gum comes out and some of the gum falls on the soil and that gum, which fell on the soil is called as 'Gum Arabic Waste Rejects'. In the absence of any test report, we hold that the 'Gum Arabic Waste/Rejects' is only 'Gum Arabic' obtained by natural process.

7. In view of these observations and clarification of CBEC dtd. 28.06.07, we hold that CVD is not leviable on the impugned goods imported by the appellant. We, further find that the decision in the case of Oriental Tiles (supra) relied upon by the first Appellate Authority has been overruled by the Division Bench of the Hon'ble High Court of Calcutta and the same cannot be relied upon."

6. As the issue stands decided in favour of the assessee by the above referred judgement, we by following the same set aside the impugned order and allow the appeal with consequential relief to the appellant.

7. Misc. Application as also appeals gets disposed of in above manner.

(Pronounced in the Open Court)

(Archana Wadhwa)
Judicial Member

(Mathew John)
Technical Member

RK-I