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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/563 /2009 - CU[DB] Date **29/02/2012**
C/M/913/09

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

To :
M/S ESPN SOFTWARE PVT. LTD.
SOUTH EXTENSION , F-40, NDSE-I, PART-I,
NEW DELHI-110048.

M/S ESPN SOFTWARE PVT. LTD. Appellant

Vs

C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/A/47/ 2012 CU[DB] dated 07.02.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Alongwith Misc Order No C/M/22/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. NEW DELHI (IMPORT & GENERAL)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult
MR.L.P.ASTHANA, ADV
R-163, S.F. GREATER KAILASH-I, NEW DELHI-48

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 Registra
(Customs Appeal Branc

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

COURT NO. II

DATE OF HEARING : 07/02/12.

Customs Miscellaneous Application No. 913 of 2011 in Appeal No. 563 of 2009

M/s ESPN Software Pvt. Ltd. Appellant

Versus

CC, New Delhi Respondent

Appearance

Shri L.P. Asthana, Advocate – for the appellant.

Shri Amrish Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri D.N. Panda, Judicial Member**
Hon'ble Shri Rakesh Kumar, Technical Member

Misc order No: C/M/22/12-Cus

Final Order No. C/A/47/12-Cus Dated : ____________

ORDER

Miscellaneous Application No. 913 of 2011 (in appeal No. 563 of 2009)

Per. D.N. Panda :-

Opportunity was granted to Revenue to find out whether prayer in the miscellaneous application shall entertainable at the third stage of litigation before Tribunal.

2. Learned representative for Revenue brings out the situation where an additional evidence is entertainable by Tribunal citing Rule 23 of CESTAT Procedure Rules, 1982. According to Revenue, it is discretion of Tribunal to entertain a prayer only in a situation if the Tribunal comes to conclusion that the aggrieved was denied of opportunity of leading such evidence in the past before the authorities below.

3. Opposing aforesaid proposition, it is submission of the learned Counsel for the appellant that the very licence was issued belatedly which can be appreciated from para 6 of the first remand order dated 28/3/99 passed by Tribunal. In view of pendency of the application before DGFT and the import occasioned, the licence was issued on 30th March 2000 with the relevant particulars mentioned therein. He specifically points out that Annexure A to the licence embodies the bill of entries which are subject matter of scrutiny in the adjudication. The said bill of entries are also patent from the show cause notice itself appearing at page 111 of the adjudication order.

4. Heard both sides and perused the record.

5. We consider it proper to admit the licence itself which ~~should~~ goes to the root of the matter to stand scrutiny because that touches the moot point in controversy and as early as 1999 in para 6 of the Tribunal's order there was a judicial noticing of the fact about pendency of the application for licence. Therefore, it is within the jurisdiction

of Tribunal to entertain the prayer for which the miscellaneous application is allowed.

Appeal No. 563 of 2009

We have heard this matter yesterday on the miscellaneous application moved by learned Counsel for consideration of his licence No. 0143827 dated 30th March 2000 issued by DGFT for disposal of the appeal.

2. We have heard the appeal in great length since the matter related to more than a decade. While Revenue's grievance is that the very licence which is relied upon by the appellant was not placed before Adjudicating Authority, that does not lend any support for defence to the appellant today. Assessee's grievance is that when the very licence emanated from the clarification issued by DGFT appearing at page 48 of the appeal record and appropriate procedure was followed to grant licence by DGFT and such Authority issued the licence, appellant cannot be denied benefit of the same.

3. There is no dispute by appellant today about the duty element involved nor also about classification. Therefore, decision in this appeal is only confined to the consideration of the DGFT licence dated 30th March 2000 relied upon by the appellant. When the appeal is reduced to this limited point and Revenue agitates for no consideration of such evidence on the ground that there is communication from DGFT that they would take sometime to trace the licence file, it would be proper to remand the matter to

the learned Adjudicating Authority to grant fair opportunity of defence to the appellant to place DGFT licence with all other legal pleadings permissible under law before that Authority for proper consideration. Both sides agree to this proposition.

4. We expect that both parties having reached to an amity as above to examine the licence aforesaid, there is no other point left for adjudication by the authority below.

5. In the result, appeal is remanded on the aforesaid limited point for re-adjudication since the appellant neither disputes duty liability nor the classification of the goods.

6. The matter has travelled a lot and requires expeditious re-adjudication by learned Adjudicating. Accordingly authority shall fix the hearing within seven days of an application being made by the appellant in this regard. Consequent upon hearing the matter is expected to be disposed within three months from the last date of hearing.

(Dictated and pronounced in open court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

PK