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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/490 /2007,564 /2007 - CU[DB] Date **09/02/2012**

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

To :
MAYOR & COMPANY

G.T. ROAD, SURANUSSI, JALANDHAR

MAYOR & COMPANY Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/A/37-38/ **2012 CU[DB]** dated 18.01.12 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. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL
REVENUE BUILDING, THE MALL,
AMRITSAR 143001.

2. Adv. / Consult
MR.SUDHIR MALHOTRA
13-R, HUKAM CHAND COLONY,
NEAR D.A.V COLLEGE, JALANDHAR

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 MAYOR & COMPANY,
G.T.ROAD, SURANUSSI, JALANDHAR

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision 18.01.2012

Custom Appeal No. 490 of 2007
(Arising out of Order in Appeal No. 91/Cus/Appl/Jal/2007 dt. 11.05.2007 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh).

M/s Mayor & Company. Appellant
Rep. by Sh. Poojan Malhotra, Advocate for the appellants.

Vs.

CC (P), Amritsar Respondent
Rep. by Sh. K.K. Jaiswal, DR for the respondent.

AND

Custom Appeal No. 564 of 2007
(Arising out of Order in Appeal No. 91/Cus/Appl/Jal/2007 dt. 11.05.2007 passed by the Commissioner (Appeals) Customs & Central Excise, Chandigarh).

CC (P), Amritsar Appellant
Rep. by Sh. K.K. Jaiswal, DR for the appellant.

Vs.

M/s Mayor & Company Respondent
Rep. by Sh. Poojan Malhotra, Advocate for the respondent.

Coram: **Hon'ble Sh. D. N. Panda, Judicial Member**
Hon'ble Sh. Rakesh Kumar, Technical Member

Final ORDER No. C1A137-38/12-Cus.

Per: Shri D. N. Panda:

Ld. Counsel submits that the goods reached from Pakistan to Amritsar by rail cargo should not have been dutiable in terms of Notification No. 48/2000-Cus. dated 25.4.2000. Because the goods could not reach through the places notified by para 4 of the notification, Revenue confiscated the goods and also imposed duty followed by penalty and redemption fine. Learned Commissioner considering that confiscation was not desirable waived levy of redemption fine reducing penalty to Rs. 5,000/-. According to appellant, it made application for grant of importation of the goods through Amritsar by rail cargo. Such application was rejected. The notification requirement being procedural, appellant should not be denied of the benefit of the notification. Against appeal of the revenue, it was submitted by the learned Counsel that when the duty has been collected confiscation of the goods was unwarranted.

2. Learned DR on the other hand says that when the goods did not reach through proper route, that was liable to be confiscated and adjudication was done properly and redemption fine was imposable.

3. Heard both sides and perused the record.

4. Para 4 of the Notification No.48/2000-Cus. dated 25.4.2000 alongwith proviso thereunder is calling for interpretation in this case. There is no dispute of arrival of the goods in India at Amritsar which was not the notified place for DFRC scheme. This is clear from para 4 of the notification. Proviso thereunder removes hardship. The said proviso requires that by special order and subject to such conditions as may be specified by the Commissioner, he may permit import and export through a route other than sea port/ airport or Inland Container Depot or through a Land Custom Station specified in para 4 of the notification. When such a relaxation proviso was in the notification, the appellant failed to exercise its right before the goods reached in India. There is no scope to read the proviso as a directory but the language employed therein read with the scheme of the exemption

makes the proviso mandatory. Although, prior order is not mandate therein, it cannot be read as a proviso interpreted to post facto sanction for the reason that the notified place in para 4 are prescribed route to meet scrutiny of customs for grant of appropriate benefit of notification so that abuse of benefit of the notification is prevented. Any goods reaching through different channel not known to customs authorities or that reaches India through different channel not permitted by the notification that calls for imposition of duty. Both sides agreed that the goods are not prohibited goods since that is covered by DFRC scheme. On such analogy levy of penalty is uncalled for. Therefore, confirming duty element & penalty is waived.

5. So far as the appeal of the Revenue is concerned, we are able to appreciate that the goods were not prohibited goods being permitted by DFRC scheme. Amritsar is notified land custom station. Therefore, order of the learned appellant authority does not suffer from legal infirmity and does not call for interference except waiver of penalty imposed on the appellant.

6. Appeals of the assesses are partly allowed and Revenue appeal dismissed.

(Dictated and pronounced in the open Court)

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

Pant