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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/621 /2011 - CU[DB]
C/STAY/3621/11

Date **15/03/2012**

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

To :
M/S P & G ENTERPRISES PVT. LTD.
SH. M.K. TULLI, DIRECTOR OF D-135, OKHLA
INDUSTRIAL AREA, PHASE-I, NEW DELHI.

M/S P & G ENTERPRISES PVT. LTD. Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/A/66 **2012** **CU[DB]** dated 05.03.12 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

ALONGWITH STAY ORDER NO C/S/54/12

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW
DELHI 110020.

2. Adv. / Consult
MR.HARPREET SINGH
G-125, PREET VIHAR, DELHI-110092

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,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 5.3.2012

Stay Application No.3621 of 2011 and Customs Appeal No.621 of 2011

Arising out of the order in appeal No.CC(A)Cus/ICD/80/2011 dated 8.3.2011 passed by the Commissioner (Appeals), Customs, New Delhi.

For Approval and Signature:

Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 26 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 26 of 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

P & G Enterprises Pvt. Ltd. .. Appellant/applicant

Vs.

C.C. (ICD), New Delhi .... Respondent

Appearance:

Shri Harpreet Singh, Advocate for the appellants/applicants
Shri R.K. Gupta, A.R. for the respondent

Coram: Hon'ble Mr. S.S. Kang, Vice President
Hon'ble Mr. Mathew John, Technical Member

Final Oral Order No. C/A/66/12-Cus.
Stay order No. C/S/54/12-Cus.
Per Mr. S.S. Kang:

Heard both sides. The applicants filed this application for waiver of pre-deposit of duty of Rs.5,73,700/-. The applicants made import of capital goods by availing Notification No.158/95-Cus , dated 14.11.1995. The condition of the notification is that the goods so imported are to be re-exported within a period of six months. The case of Revenue is that the applicants have not exported the goods within six months, therefore, the demand is rightly made.

2. The contention of the applicants is that as per provisions of the Notification No.158/95-Cus, the Commissioner of Customs can extend time for further period of six months. In the present case, the adjudicating authority confirmed the demand by ~~claiming~~ denying the benefit of Notification No.158/95-Cus. The applicants filed appeal before Commissioner (Appeals) and the Commissioner (Appeals) vide order dated 8.3.2011 set aside the adjudication order and directed the jurisdictional officer to dispose of the application for extension of time under Notification No.158/95-Cus within three weeks of the receipt of the order by issuing a speaking order. In pursuance of the order passed by the Commissioner (Appeals), Deputy Commissioner vide letter dated 29.6.2011 informed the applicants that the request of the applicant was rejected by the Commissioner of Customs. The contention of the applicant is that the request for extension of time was rejected without affording an opportunity of hearing to the applicants and no speaking order was passed by Commissioner of Customs. Only the decision of the Commissioner ~~(Appeals)~~ has been conveyed by the Deputy Commissioner to the applicant. Therefore, the impugned order is not sustainable.

3. We find that vide letter dated 29.6.2011, the Deputy Commissioner in pursuance of the order in appeal passed by Commissioner (Appeals) conveyed the decision of the Commissioner of Customs and rejected the request for extension of time under Notification No.158/95-Cus. We find that Commissioner of Customs (Appeals)

directed the jurisdictional officer to pass a speaking order. However, no speaking order is passed by the Commissioner of Customs. The request for extension of time made by the applicants was rejected without affording an opportunity of hearing to the applicants. Therefore, the impugned order is set aside after waiving the pre-deposit of dues and the matter is remanded to the jurisdictional Commissioner of Customs to decide the issue afresh after affording an opportunity of hearing to the applicants. The appeal is disposed of by way of remand.

(S.S. Kang)
Vice President

(Mathew John)
Technical Member

scd/