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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/STAY/3434/2011 IN C/607 /2011 - CU[DB] Date **03/04/2012**

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

To :
C.C. (ICD) NEW DELHI
ICD, TUGHLAKABAD, NEW DELHI 110020.

C.C. (ICD) NEW DELHI Appellant

Vs

M/S M.K. Y. ENTERPRISES PVT. LTD. **STAY ORDER C/S/96/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/A/97/ 2012 CU[DB]** dated 06.03.2012 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
M/S M.K. Y. ENTERPRISES PVT. LTD.
404, SHYAM CHAMBERS, 2944,
BHAGAT SINGH STREET, 3, CHUNAMANDI,
PAHARGANJ, DELHI.

2. Adv. / Consult MR. PREM RANJAN,
C/O. **M/S M.K. Y. ENTERPRISES PVT. LTD.**
404, SHYAM CHAMBERS, 2944,
BHAGAT SINGH STREET,
3, CHUNAMANDI, PAHARGANJ, DELHI.
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
PRINCIPAL BENCH, NEW DELHI
Court No.I

C/Stay 3434/2011 in C/Appeal No.607/2011

(Arising out of order in appeal No.CC(A)ICD/338/2011 dated 16.8.2011 passed by the Commissioner of Customs & Central Excise(Appeals), New Delhi)

Date of Hearing: 6.3.2012

For Approval and signature:

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

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1. Whether Press Reporters may be allowed to see The order for publication as per Rule 27 of the CESTAT(Procedure) Rules, 1982?

2. Whether it would be released under Rule 27 of the CESTAT (Procedure) rules, 1982 for publication in any authoritative report or not?

3. Whether their lordships wish to see the fair copy of the order?

4. Whether order is to be circulated to the Department Authorities?

CC, New Delhi — Appellants

Vs

M/s M.K.Y. Enterprises Pvt Ltd — Respondent

Appeared for the Appellant: Shri K.K. Jaiswal, DR
Appeared for the Respondent: Shri Prem Ranjan Kumar, Advocate

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

Stay ORDER No. C/S/96/12-Cus.

Per S.S. Kang: Final order No. C/A/97/12-Cus.

Heard both sides. Revenue filed this application for stay of operation of the impugned order on the ground that the Commissioner (Appeals) has remanded the matter to the adjudicating authority. As per proviso of section 128-A of the Customs Act, the Commissioner has no power to remand.

2. We find that the Commissioner (Appeals) has disposed of the appeal with the following directions:-

> *"The moot issue which arises and raised by the appellant is the necessity of such enhancement against the declared value. It is a matter of record that the declared value has been enhanced in the said BE; however, it is not discerned effectively vide the said BE or any other speaking order as to why such enhancement was resorted to. Hence the assessing authority is hereby directed to issue speaking order under the provisions of Section 17 of the Customs Act, 1962. It is needless to emphasize that the appellant is essentially required to be heard before finalization of the order."*

3. We find that the Commissioner (Appeals) has only directed the lower authority to issue speaking order under provisions of Section 17 of the Customs Act, 1962. The Commissioner (Appeals) has not decided the issue nor directed the lower authority to decide afresh. In the circumstances, the impugned order is not a remand order passed by the Commissioner (Appeals). We find no merit in the appeal. Stay petition and appeal are disposed of accordingly.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)
Member (Technical)
MPS*

(S.S. KANG)
Vice President