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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/S/3670/2011 IN C/628 /2011 - CU[DB] Date **04/04/2012**

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

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

C.C. (ICD) NEW DELHI Appellant

Vs

M/S NOBLE MOULDS PVT. LTD. **STAY ORDER NO.C/S/99/2012** Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/A/102/ 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 NOBLE MOULDS PVT. LTD.
AL-31, PHASE-II EXTN., NOIDA.

2. Adv. / Consult SH. D.S. CHADHA & MS. PRABJYOT KAUR,
C/O. **M/S NOBLE MOULDS PVT. LTD.**
AL-31, PHASE-II EXTN., NOIDA.

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/S 3670/2011 in C/Appeal No.628/2011

(Arising out of order in appeal No.CCA/Cus/ICD/298/11 dated 29.7.2011 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

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

2. Whether it would 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 Department Authorities? No

CC, New Delhi — Appellants

Vs

M/s Noble Moulds Pvt Ltd — Respondent

Appeared for the Appellant: Shri R.K. Gupta, DR
Appeared for the Respondent: Shri D.S Chadha, Advocate
Ms. Prabjyot Kaur Chadha, Advocate

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

Final ORDER No. C/A/102/12-Cus.
Stay order No. C/S/99/12 Cus

Per S.S. Kang:

Heard both sides. Revenue filed this application for stay of operation of the impugned order whereby the Commissioner

(Appeals) has remanded the matter to the adjudicating authority to decide the matter afresh. The dispute is in respect of Notification No. 102/2007-Cus dated 14.9.2007 for refund of customs duty paid in ~~line~~ lieu of VAT. The main contention of Revenue is that the Commissioner (Appeals) has no power to remand under provision of Section 128 of the Customs Act. The contention of Revenue is that the respondents have not fulfilled the conditions of the Notification.

2. We find that as per the provision under Section 128-A of the Customs Act, the Commissioner has no power to remand as held by the Hon'ble Supreme Court in the case of MIL India Ltd reported in 2007 (210) ELT 188 (SC). We find merit in the contention of the Revenue in this regard. Further, we find that the impugned order is challenged on merit on the ground that conditions of Notification ~~are not~~ have been fulfilled. This contention requires verification of facts and documents as observed by Commissioner (Appeals). In view of this, the matter requires re-adjudication and the impugned order is set aside and the matter is remanded to the adjudicating authority to decide the refund claim of the respondents afresh after affording an opportunity of hearing to the ~~Appelaint~~ Respondents. Appeal and stay petition are disposed of in the above terms. The respondents are directed to appear before the adjudicating authority on 30.4.2012 and thereafter the adjudicating authority will decide the issue preferably within three months.

(Order dictated and pronounced in the open Court.)

(MATHEW JOHN)	(S.S. KANG)
Member (Technical)	Vice President