FAX : 0532-2400149

REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 07/12/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/71105/2016-CU[DB] dated 28/11/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 129-A(4) of the Customs Act, 1962.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	C/59161/2013	COMMISSIONER OF CUSTOMS-GHAZIABAD 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD,UTTAR PRADESH 201002
		Name and Address of Respondent
2		RUBY IMPEX 1049,OUTSIDE INDUSTRIAL AREA,, JALANDHAR ,PUNJAB

Copy To

Advocate(s) / Consultant(s):

3 Bar Association, CESTAT, Allahabad

4 Director Publications, Customs, Excise. I.P. Estate, Delhi

5 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

6 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

7 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

8 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

9 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

10 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad -- 38

11 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

12 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Appeal No.C/59161/2013-EX[DB]

Arising out of Order-in-Original No.13/Commissioner/GZB/CUS/2012-13 dated 31.03.2013 passed by Commissioner Customs & Central Excise, Ghaziabad.

Commissioner of Customs & Central Excise, Ghaziabad

...APPELLANT(S)

VERSUS

M/s Ruby Impex

...RESPONDENT (S)

APPEARANCE:

Shri T.K. Sikdar, Asstt. Commr. (A.R.) for the Department (s)
None for the Assessee

CORAM:

HON'BLE SHRI JUSTICE DR. SATISH CHANDRA, PRESIDENT
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 28.11.2016

FINAL ORDER NO.- 71105/2016

Per Mr. Anil G. Shakkarwar:

The present appeal is filed by the Revenue against Order-in-Original No.13/Commissioner/GZB/CUS/2012-13 dated 31.03.2013. The prayer in the said appeal is to impose penalty on Shri Devesh Pandey, Inspector and Shri S.C. Sahu, Superintendent and to enhance penalty impose on M/s Ruby Impex.

2. The brief facts of the case are that through impugned Order, Original Authority ordered for absolute confiscation of Lead Scrap, Zinc Scrap, live cartridges of different bore, empty

cartridge, castings and brass scrap. The confiscation was absolute and option to redeem the goods was not provided in the said impugned order. The Original Authority imposed penalty of Rs.25 lakh on M/s Ruby Impex, Jalandhar. Further, the Original Authority dropped proceedings against Shri Devesh Pandey, Inspector and Shri S.C. Sahu, Superintendent .

3. Aggrieved by the said Order-in-Original, Revenue is before this Tribunal with a prayer as stated above.

4. The grounds of appeal are that Shri Devesh Pandey, Inspector and Shri S.C. Sahu, Superintendent working at ICD, Loni, Ghaziabad failed to examine the said goods and as a result, failed to perform their duties in accordance with the Customs Act. In respect of penalty on M/s Ruby Impex, the ground stated in the appeal is that the importer has imported restricted and prohibited items.

5. Shri T.K. Sikdar, Assistant Commissioner (AR) for the Revenue has supported the grounds of Appeal. The counsel for respondent-assessee have requested for adjournment due to ill health.

6. Having consider~~ing~~ed the contentions, we have carefully gone through the findings of Original Authority, which is available at Page 66 of impugned Order-in-Original, wherein the Original Authority has held that there is no evidence on record to justifying penalty under Section 112 and that the Officers have

neither connived nor indulged in the fraudulent act and that the charges, made out against them, are not explicit and the only ground made out is that they ought to have examined the containers fully and discovered discrepancies. The Original Authority further held that the penal provisions, under Section 117 of Customs Act, 1962, is residuary in nature and can be invoked only in the situation when no express penalty is provided, elsewhere in the Customs Act. He further held that since the show-cause-notice proposed imposition of penalty under Section 112 of Customs Act, 1962 against the two Officers, the provisions of Section 117 of Customs Act, 1962 were not invokable. We find that above findings by Original Authority are sustainable and, therefore, we reject the appeal filed by the Revenue in respect of prayer to impose penalty on Shri Devesh Pandey, Inspector and Shri S.C. Sahu, Superintendent. In respect of penalty imposed on M/s Ruby Impex, we find that there is no reason to interfere with the same. In view of above, we dismiss the Appeal filed by Revenue.

(Dictated & pronounced in the open Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Justice Dr. Satish Chandra)
President

Mishra

प्रमाणित प्रति / Certified True Copy
8.12
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (C.E.S.T.A.T.)
38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001