

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

Dated: 15/09/2017

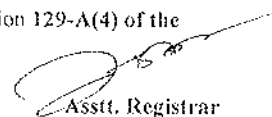
To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71052-71053/2017-SM[BR] dated 14/09/2017

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/70089/2016	Ishan Systems Pvt Ltd V-255.arvind Nagar NEW DELHI NEW DELHI
2	C/70114/2016	Rukum Singh Yadav Director C/o Ishan System Pvt Ltd, V- 255.arvind Nagar, ghonda DELHI DELHI
		Name and Address of Respondent
3		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307
4		C.C. & C.E. & S.T.-Noida C-56/42...SECTOR 62, NOIDA, UTTAR PRADESH-201307

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Other Appellants and Respondents as per Annexure

Copy To

5 Advocate(s) / Consultant(s):

Pradeep Kumar Mittal Adv.
171-CHITRA VIHAR,
DELHI
110092

6 Bar Association, CESTAT, Allahabad

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

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

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

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

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

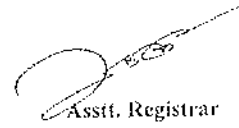
12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

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

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

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

16 C.D.R. 17 Office Copy 18 Guard File



Asstt. Registrar

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
Old Red Building, 38 M.G. Marg, Civil Lines,
Allahabad – 211 001**

COURT NO. II

DATE OF HEARING : 06/09/2017.
DATE OF DECISION : 14/09/2017.

Customs Appeals No. 70089 and 70114 of 2016 (SM)

[Arising out of the Order-in-Original No. 20/COMMR/NOIDA-I/2015-16 dated 13/10/2015 passed by The Commissioner, Central Excise Commissionerate, Noida.]

M/s Ishan Systems Pvt. Ltd.] Appellants
Shri Rukum Singh Yadav, Director]

Versus

CCE & ST, Noida Respondent

Appearance

Shri Pradeep K. Mittal, Advocate – for the Appellant.

Shri Mohd. Altaf, Authorized Representative (DR) – for the Respondent.

CORAM: Hon'ble Shri Ashok Jindal, Member (Judicial)



Final Order No. 71052-71053/2017 Dated : 14/09/2017

Per. Ashok Jindal :-

The appellants are in appeal against the impugned order wherein duty has been demanded and goods in question has been confiscated which were allowed to be redeemed on payment of redemption fine and penalties are also imposed on both the appellants.

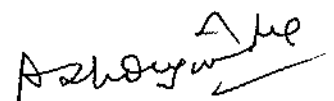
Ashok Jindal

2. The brief facts of the case are that the main appellant was granted a licence for setting up a 100% EOU for providing infrastructure facility for STP unit under the Software Technology Park Scheme in Noida. The appellant applied for Private Customs Bonded Warehouse Licence, which was granted under Notification No. 153/93-CUS dated 13/08/1993. The appellant executed bond B-17 for a sum of Rs. 1.5 crores and also furnished a bank guarantee of sum of Rs. 7.50 lakhs. The appellant imported air conditioning equipment and generating set without payment of duty availing the benefit of Custom Notification No. 153/93-CUS dated 13/08/1993. The appellant took a loan of Rs. 40 crores from Vijaya Bank for construction of building for housing STP units. Building was constructed. Imported equipments were also installed but the appellant could not start the project and did not discharge their export obligation. As appellant could not pay the installments of loan taken from the Vijaya Bank, the bank declared the appellant as NPA and the proceedings under Securitization Act were initiated against the appellant. The appellant from time to time intimated to the Department of such happenings. The bank sold the property in auction on 05/12/2011. The said action of the bank was challenged by the appellant before Debt Recovery Tribunal and Appellate Debt Recovery Tribunal without any success. As appellant could not fulfill their export obligation, therefore, a show cause notice dated 26/09/2014 was issued to the appellant for demanding duty on the imported equipments under Section 72 readwith Section 28 of the Customs Act alongwith interest and to impose

Acharya HP

penalty on both the appellants. The matter was adjudicated and duty of Rs. 27,74,835/- alongwith interest was demanded and the goods were held to be liable for confiscation with an option to redeem the same on payment of redemption fine of Rs. 20 lakhs and equivalent amount of penalty was imposed on the main appellant and a penalty of Rs. 3 lakhs was imposed on Shri Rukum Singh Yadav, Director of the main appellant. Aggrieved from the said order, the appellants are before me.

3. The learned Counsel for the appellants submit that as various Departments did not granted approval of commissioning the project, the operation of STP unit could not be commenced. In the meantime, the installment of the loan availed from Vijaya Bank became payable and the bank illegally declared the appellants as NPA, thereafter the proceedings were initiated under Securitization Act and taken over the possession of land and building in which the imported equipments were already installed. The bank further sold the property on auction on 05/12/2011. The action of the bank was challenged before Debt Recovery Tribunal and Appellate Debt Recovery Tribunal, but without any success. The appellant informed to the Department on 04/05/2012 about the auction of the property and also on 14/12/2012. Thereafter on 01/07/2013 informing the Department of dismissal of their case from Debt Recovery Tribunal. Further also informed on 09/06/2014 but Department did not take any action. In these circumstances, the fulfillment of export obligation was beyond control of the appellant, therefore,



proceedings are to be dropped in the light of the decision of this Tribunal in the case of **Age of Enlightenment Publications vs. CC (Air Cargo Export), New Delhi** reported in **MANU/CE/0706/2016** to say that it is beyond control of the appellant to fulfill the export obligation, in that circumstances redemption fine, interest and penalties are not imposable. He further submitted that as the goods have been confiscated and till date no action has been taken to release the money out of the sale of the goods in question by the Department, being the owner of the property, therefore, the duty is not payable by them. He also relied on the decision of **Fortis Hospital Ltd. vs. CC** reported in **MANU/SC/0417/2015**.

4. On the other hand, learned AR opposed the contention of the learned Counsel of the appellants and submits that it is admitted fact that the appellant has imported the equipments in question without payment of duty by availing benefit of Notification No. 153/93-CUS dated 13/08/1993. It is also a fact on record that appellants failed to discharge their obligation as per the said notification. In that circumstances, the appellants are under obligation to pay duty, interest or any other demand by the Proper Officer. The continues nature of obligation of the goods was under the bond executed by the appellant has been upheld by the Hon'ble Supreme Court in the case of **Mediwell Hospital and Healthcare Pvt. Ltd. vs. Union of India** reported in **1997 (89) E.L.T. 425 (S.C.)**, therefore, under Section 72 of the Customs Act, 1962, the proceedings were

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initiated against the appellants and the appellants failed to fulfill their export obligation. In that circumstances duty is rightly demanded from the appellant and penalties were also imposed correctly.

5. Heard the parties considered the submissions.

6. In this case, it is an admitted fact that appellant is 100% EOU and imported the equipments availing the benefit of Notification No. 153/93-CUS dated 13/08/1993 without payment of duty. It is also an admitted fact that appellant has failed to fulfill their export obligation under Notification No. 153/93-CUS *ibid*.

7. The sole contention of the appellant is that as they could not repay the loan of the Vijaya Bank and bank took over the possessing property which has been auctioned. The contention of the appellant is that they kept informing Department of the happenings with the bank, as they could not repay the loan of the Vijaya Bank, therefore, the bank has took over the property and auctioned.

8. I have gone through the records placed before me. In this case, the auction took place on 05/12/2011, whereas the appellant intimated to the Department that proceedings are going with the Debt Recovery Tribunal only on 04/05/2012 which is almost six months after the auction of the land and building with installed of the equipments in question. Admittedly there were lapses on the part of the appellant, as appellant fail to inform the

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Department immediately when they were declared NPA by the bank. Further, it is a fact on record that appellant has failed to discharge their export obligation, in that circumstances duty is rightly demanded on the goods in question which were imported duty free.

9. The learned Counsel for the appellant has relied on the decision of **Age of Enlightenment Publications** (supra), the facts of the said case are not relevant to the case in hand. As in that case, the appellant could not fulfill their export obligation as the supplier of the machine in that case went in liquidation and the appellant placed an order for supply of machine and installation thereof, as supplier of the machine went in liquidation, therefore, the machine could not be installed. In that case also, the duty was also demanded. Therefore, the decision in the said case is of no help to the appellant. Further, I find that the appellant has also relied on the decision of **Fortis Hospital Ltd.** (supra). In the said case also the show cause notice was limited for confiscation of the goods and imposition of penalty but in the adjudication, the duty was demanded from the appellant. In those facts of the case, the Hon'ble Apex Court held that demand of duty was not the part of the show cause notice, therefore, duty cannot be demanded. In this case, duty has been demanded in the show cause notice itself, therefore, the facts of the case of **Fortis Hospital Ltd.** (supra) are not applicable to the facts of the case in hand.

Acharya

10. Further, I find that in this case the equipments in question are held liable for confiscation as these equipments did not use for intended purpose.

11. As goods has been confiscated, the same is the property of the Revenue and the goods can be redeemed on payment of redemption fine as imposed in the impugned order.

12. With regard to the penalties imposed on both the appellants, I find that the appellants has failed to discharge their export obligation in terms of Notification No. 153/93-CUS dated 13/08/1993, in that circumstances, the penalties are imposable on the appellants.

13. Considering the fact that the penalties imposed on the appellants are on higher side, therefore, penalties on the appellant M/s Ishan System Pvt. Ltd. is reduced to Rs. 15 lakhs (Rupees Fifteen Lakhs) and Rs. 1 lakh (Rupees One Lakh) in the case of Shri Rukum Singh Yadav, Director of the main appellant.

14. Appeals are disposed of in the above terms.

(Pronounced in open court on 14/09/2017.)

Sd/-

(Ashok Jindal)

Member(Judicial)

PK

प्रमाणित प्रति/Certified True Copy
 28/09/17
 सहायक पंजीकृत/Asstt. Registrar
 सीमाशुल्क, कलकत्ता-19
 अपील अधिकारण(C.A.D./A.T.)
 3B, एम.जी. मार्ग, कलकत्ता-211001
 3B, M. G. MARG, KOLKATA-211001

