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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
CUSTOMS APPEAL BRANCH

Dated: **07/07/2015**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/52096/2015-CU[DB]** dated **13/05/2015**

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(CUSTOMS Appeal Branch)

Application	Appeal	Name and Address of Appellant
1	C/481/2009	ICD, Tughlakabad, New Delhi 110020.
		Name and Address of Respondent
2		JAGDAMBA TIN SUPPLIERS, KN/B-11, GALI NO. 10, UPPAR ANAND PARBAT, NEW DELHI-110005.,,

Copy To

3 Advocate(s) / Consultant(s):

4 Additional Party's Name & Address :
5 Bar Association, CESTAT, Delhi
6 Director Publications, Customs, Excise. I.P. Estate. Delhi
7 M/s Centax Publications Pvt. Ltd.. 1512-B, Bhishm Pitamah Marg, New Delhi-3
8 Company Law Institute of India Pvt. Ltd.. No.2 (old no.36). Vaithyaram Street, T. Nagar, Chennai-17
9 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
10 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
11 LAWCRUX Advisors Pvt. Ltd.. LAW House. 1-8. 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 C.D.R. **15** Office Copy **16** Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI – 110 066.

Date of Hearing: 13.05.2015

For Approval &Signature :

Hon'ble Hon'ble Justice G. Raghuram, President
Hon'ble Mr. R.K. Singh, Member (Technical)

1.	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3.	Whether Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	Yes

Appeal No.C/481/2009-CU[DB]

[Arising out of Order-in-Original No.21/2009, dated 09.03.2009 passed by the CC, ICD, TKD, New Delhi]

C.C. ICD, TKD, New Delhi — Appellant

Vs.

M/s. Jagdamba Tin Suppliers — Respondent

Appearance
Shri BB Sharma, DR - for the appellant

Ms. Tuhina Sinha, Advocate - for the respondent

CORAM: **Hon'ble Justice G. Raghuram, President**
Hon'ble Mr. R.K. Singh, Member (Technical)

Final Order No. 52096/2015 dated 13.05.2015

Per Mr. R.K. Singh:

Revenue has filed this appeal against Order-in-Original No.21/2009, dated 09.03.2009 which quashed the proceedings under Show Cause Notice dated 24.07.2006 which was issued demanding differential duty of Rs.4,34,725.09 in respect of 78.100 MT of secondary tin plate sheets/coils alleged to be mis-declared as prime materials, proposing confiscation thereof and imposition of penalty on the respondents.

2. The facts of the case are that the respondent imported what it declared to be prime tin plates/coils vide Bill of Entry No.471564, dated 07.12.2005. But on examination, the same were found to be secondary tin plate sheets/coils, which attracted basic duty at the rate of 20% (as against basic custom duty of 5% leviable on prime tin plates/coils). The case was adjudicated vide Order-in-Original No.12/2006, dated 06.02.2006 by Commissioner of Customs, ICD, Delhi.

3. In the wake of detection of the aforesaid mis-declaration, follow up actions were taken and investigations conducted at the premises of the respondent, M/s. Mayank Containers Pvt. Ltd., to whom the respondent used to sell the goods and M/s. Saksham Containers Pvt. Ltd., to whom the goods were given for job work by M/s. Mayank Containers. It transpired that the respondent had imported what was declared to be prime tin plates/coils vide three Bills of Entry No.458408, 458473 and 458406, all dated 18.05.2005. The total quantity imported was 169.92 MT. During investigation, no stock was found at the premises of the respondent and M/s. Mayank Containers, but stock of 78.100 MT of the secondary tin sheets/coils was found at the premises

of M/s. Saksham Containers and as there was evidence of sale of goods by the respondent to M/s. Mayank Containers and supply of tin sheets by M/s. Mayank Containers to M/s. Saksham Containers for job work, 78.100 MT secondary tin sheets/coils was placed under seizure under the reasonable belief that the goods actually pertained to those imported under the said three Bills of Entry and were mis-declared at the time of import.

4. The primary adjudicating authority vide the impugned order dated 09.03.2009 dropped the proceedings, after considering the evidence on record holidng as under:-

> *"17.7 It is found as above that the issue pertains to seizure of 78.100 MT of Tin Plate Sheet from the premises of M/s. Shaksham Containers Pvt. Ltd., the job worker of M/s. Mayank Containers Pvt. Ltd. As per SCN it is alleged that this 78.100 MT of material was imported vide B/E No.458408, 458473 and 458406 all dated 18.10.2005 by M/s. Jagdamba Tin Suppliers and that the same was mis-declared to evade customs duty of Rs.4,34,725/- and to circumvent port restrictions. The SCN is silent about the total quantity imported i.e. 169.92 MTs imported vide the said three bills of entry. As per the relied upon documents and statements tendered under section 108 of the Customs Act, 1962, M/s. Jagdamba Tin Suppliers cannot be held as owner of the seized goods, since the imported goods were already sold as prime tin plates. It is not conclusively proved that wrong invoices were issued for local sale also. During investigation the authenticity of sale bills was not disputed. Further M/s. Mayank Containers Pvt. Ltd. procured goods from other than M/s. Jagdamba Tin Suppliers also. No evidence on record has been adduced in favour of department's case in respect of seized material except the seizure of 78.100 MT defective/secondary Tin Sheets at the Job worker's premises and statements recorded during investigations. However, the*

investigation has failed to support these statements by direct of corroboratory evidences/documents/ records. The relationship of the seized goods vis-a-vis the imported tin plates sheets vide Bs/E Nos.458408, 458473 and 458406 all dated 18.10.2005 is also not conclusively established by the investigation."

5. Revenue has filed the appeal on the following grounds:-

(i) The seizure was made on follow up action on specific intelligence.

(ii) The very fact that the seized goods were supplied by M/s. Mayank Containers Pvt. Ltd. who bought the goods from the respondent shows that the same were imported as part of the total imports under the aforesaid Bills of Entry dated 18.10.2005 and hence were clearly mis-declared as the declaration under those three Bills-of Entry were prime tin sheets/coils. Shri Vipin Mittal, Director of M/s. Mayank Containers Pvt. Ltd. has stated in his statement that it did not require prime tin sheets for manufacture of containers.

(iii) The value declared by the respondent at the time of import was US$ 700 PMT which was closed to US$ 660 PMT declared for secondary tin plate sheets/coils which showed that the goods imported was secondary tin plate sheets/coils only.

(iv) The examination report at the time of import and in respect of the said three Bills of Entry was made only on the examination of 10% of the goods and therefore when only 78.100 MT (out of the total quality) of secondary tin plate sheets/coils were under seizure, having reliance been the examination report is not justified.

(v) Respondent had admitted in the statement that the goods sold to M/s. Mayank Containers Pvt. Ltd. were out of the goods imported under the said three Bills of Entry and the Mr. Vipin Mittal, Director of M/s. Mayank Containers has stated that he transferred the said goods to M/s. Saksham Containers Pvt. Ltd., job worker, where the seized goods were found.

(vi) The seized goods (78.100 MTs) were imported as part of the goods imported under the said three Bills of Entry mis-declaring them as prime goods.

6. The respondent has contended that the goods imported vide the said three Bills of Entry were examined at the time of import and were found to be prime quality tin plate sheets/coils. Shri Vipin Mittal, Director of M/s. Mayank Containers Pvt. Ltd. has clearly stated that they also used to buy the goods from suppliers other than the respondent and there is no evidence to show that the goods seized at the premises of M/s. Saksham Containers Pvt. Ltd. were part of the goods which were imported under the said three Bills of Entry and that Shri Vipin Mittal in his statement has also stated that they received goods from the respondent as per the sale invoices.

7. Ld. Departmental Representative reiterated the contentions of the Appeal Memo.

8. We have considered the facts and contentions of both sides. It is a fact that the goods imported vide three Bills of Entry dated 18.10.2005 were duly declared to be prime tin plate sheets/coils. The goods were duly cleared by customs after examination and the examination report clearly shows that the goods were in conformity with the description mentioned in the invoices and Bills of Entry. The goods after being cleared were sold to M/s. Mayank Containers Pvt. Ltd. and the statement of Shri Vipin Mittal, Director of M/s. Mayank Containers Pvt. Ltd. clearly shows that M/s. Mayank Containers Pvt. Ltd. also procured tin plate sheets from various suppliers other than the respondent and that it had transferred some materials to M/s. Saksham Containers Pvt. Ltd. without issuing any documents and that it had purchased more than 200 MT tin sheets from the respondent and some of the materials were lying at the premises of the job worker, M/s. Saksham Containers Pvt. Ltd. The adjudicating authority has observed that the total quantity mentioned in the three Bills of Entry was 169.92 MT while Shri Vipin Mittal claimed to have purchase the raw-materials amounting to more than 200 MTs from the respondent. Thus, it could not be said that the entire material lying at the premises of M/s. Saksham Containers Pvt. Ltd. was out of the goods imported under the said three Bills of Entry even if M/s. Mayank Containers Pvt. Ltd. had not purchased goods from any other suppliers; in the present case, it had purchased goods from other suppliers also. Further, when the goods were duly cleared by customs after proper examination and after finding them to be not mis-declared, the respondent cannot be held liable to the differential duty on the ground that the goods were defective/secondary tin plate sheets/ coils merely on the basis of the statement of a third party when that party did not object at the time of receipt of goods from the suppliers that the

goods were not prime material I. Also there is no unbroken link between the goods seized and the goods imported under the said three Bills of Entry dated 18.10.2005 in-as-much-as the goods were first sold by the respondent to M/s. Mayank Containers who also used to obtain goods from other suppliers and M/s. Mayank Containers in turn supplied the goods to M/s. Saksham Containers Pvt. Ltd. Not even an iota of evidence exists to show that the goods seized were necessarily out of the goods imported vide the said three Bills of Entry under which the total quantity imported was 169.92 MT., while the purchase as per M/s. Mayank Containers Pvt. Ltd. from the supplier respondent was to the tune of more than 200 MT. The respondent has nowhere admitted that it had supplied secondary tin plate sheets/coils to M/s. Mayank Containers Pvt. Ltd. In these circumstances and having regard to the fact that the goods imported under the said three Bills of Entry dated 18.10.2005 were duly cleared by customs after proper examination as per laid down norms and in the absence of clear unbroken link of the seized goods with the imported goods vide the said three Bills of Entry, we are of the view that the adjudicating authority came to the correct conclusion that the investigation has failed to establish the relationship of the seized goods with the goods imported vide three Bills of Entry dated 18.10.2005 and has therefore rightly dropped the proceedings. In view of the foregoing, we do not find any merit in Revenue's appeal and therefore the same is dismissed.

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

SSK