REGISTERED / AD

FAX : 011-26108426

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

Dated: **30/04/2014**

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. **C/A/51798/2014-CU[DB]** dated **23/04/2014**

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/334/2009	**JATIN AND COMPANY,** 10, ASHOK BUILDING, GROUND FLOOR, 541-C, H ACENWALA ROAD, MATUNGA (CR) MUMBAI.
		Name and Address of Respondent
2	C/334/2009	**C.C. (ICD) NEW DELHI** ICD, Tughlakabad, New Delhi 110020.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

Deepak Jain /Pardeep K.B/Shiv Prakash Pandey,Adv
C-623, NEW FRIENDS COLONY, NEW DELHI, 110025

4 Bar Association, CESTAT, Delhi

5 Director Publications, Customs, Excise, I.P. Estate, Delhi
6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, 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, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad - 38
13 C.D.R. 14 Office Copy 15 Guard File

Asstt. Registrar(CUSTOMS Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

COURT NO.II

Customs Appeal No.C/334/2009-CU[DB]
[Arising out of Order-in-Original No.17/2009 dated 02.03.2009 passed by the Commissioner of Customs, New Delhi].

Jatin and Company ...Appellant

Vs.

C.C. (ICD), New Delhi ... Respondent

Present for the Appellant : Shri.Tri Puran Roy & Shri Rajinder Singh, Advocate
Present for the Respondent : Shri.Rakesh Puri, DR

Coram: Hon'ble Mr.D.N.Panda, Judicial Member
Hon'ble Mr.Manmohan Singh, Technical Member

Date of Hearing: 23.04.2014

FINAL ORDER NO. 51798/2014 DATED: 23.04.2014

PER: D.N.PANDA

The only point for consideration in this appeal is whether there was misdeclaration of goods admitted to be exported. The non-basmati rice was admitted to be exported from 29.01.2009 to 02.02.2009. Customs detected such goods mis-declared as Basmati rice on preliminary examination. Sample drawn was also sent for testing. The test result dated 12.02.2009 proved the goods to be non-basmati rice misdeclared as basmati rice. In such circumstances the original authority confiscated consignment of non-basmati rice and imposed redemption fine of Rs.20.00 Lakhs under section 125 of Customs Act 1962 and also imposed penalty of Rs.20.00 Lakhs under section 114 (i) of the said Act. Ld. Counsel for the appellant submits that it was by mistake the non-basmati rice packets were loaded in the container and as soon as the appellant came to know that such goods were loaded ~~and~~ intimation was sent to the ld. Commissioner on 18.02.2009 Stating the difficulty of the workers who loaded non basmati rice in place of basmati rice. Therefore, there cannot be any presumption that the appellant deliberately misdeclared the non-basmati rice to be basmati rice. Accordingly, penalty is not imposable. So also redemption fine not imposable.

2. According to appellant, the penalty if any warranted to be deposited should have been examined in the light of section 114 AA of the Customs Act 1962 without governing the case under section 114 (i) of the said Act. *Mens-rea* is essential for invoking penal provision of section 114AA which came to the statute book on 13.07.2006. Therefore, in absence of *mens-rea*, no penalty is leviable.

3. Revenue supports the adjudication stating that only upon detection by preliminary examination the appellant wrote to explain about the fault of the workers. When the appellant waived service of the show cause notice on it, the authority adversely passed order on 02.03.2009.

4. Heard both sides and also perused the records.

Sd/-

5. Attempt to export non-basmati rice came to record, when the preliminary examination was conducted, that was corroborated by the testing laboratory report dated 12.02.2009. 6 days there-after when the appellant would apprehend that the proceeding shall be initiated under section 111 and 114 of Customs Act 1962, it sent a letter to the Commissioner pleading ignorance and finding fault with the workers. Such plea does not have basis, since the appellant did not come out with clean hands to inform the authority before 12.02.2009. That proved misdecaration of the description of goods. Once such misdeclaration is established section 113 shall apply for confiscation of the goods. The authority accordingly, granted redemption option to the appellant. But the said authority has not recorded the value of the non-basmati rice attempted to be exported for determination of redemption fine and penalty. Therefore, we ascertain from the appellant as to the value of the said goods. It is explained that the value shall be Rs.1,50,16,320/-. Considering 10% profit margin, the redemption fine is reduced to Rs.15.00 Lakhs.

6. So far as the penalty of Rs.20.00 Lakhs under section 114 (i) is concerned, invoking of the said section is proper. That rules out applicability of section 114 AA of Customs Act 1962. It may be stated that the appellant took a risk in attempting to export non-basmati rice and there shall be no sympathy for any reduction in penalty. However, considering that the appellant has admitted the misdeclaration,

to reduce the litigation, the penalty is reduced to Rs.15.00 Lakhs. With the aforesaid concession appeal is partly allowed to the extent indicated above.

[Dictated & Pronounced in the open Court].

28.4.2014 28/4/2014.

(MANMOHAN SINGH)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

Anita