FAX : 011-26108426

REGISTERED / AD

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

Dated: **02/09/2015**

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **C/A/52650-52651/2015-CU[DB]** dated **12/08/2015**

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/Stay/1122/2010	C/203/2010	**SH. KHALIK CHATAIWALA PROP.** M/s. Oriental Enterprises, Plot No.69, Village Palaspe, Taluka Panvel, Distt. Raigad (Maharashtra)
2	C/Stay/1123/2010	C/204/2010	**SH. RAMESH KHANAVKAR MANAGER** M/s. Oriental Entps. Village-Navada, P O Taloja, Taluka-Panvel, Distt. Raigad (Maharashtra)

	Name and Address of Respondent
3	-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302
4	-C.C.E. GHAZIABAD C.G. O. Complex-II, Kamla Nehru Nagar, Ghaziabad 201302

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Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Pradeep Jain,Advocate
Jain Globus Law Firm, 370-371/2, Ist Floor,
Sahi Hospital Road,
Jangpura(Bhogal),
New Delhi-110014

6 Additional Party's Name & Address :

7 Bar Association, CESTAT, Delhi

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

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

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

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

12 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

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

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

15 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

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

Asstt. Registrar(CUSTOMS Appeal Branch)

(18)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order : 12.8.2015

Appeal No. C/203-204/2010-CU(DB)

(Arising out Order-in-Appeal No. 41/Comm/Ghd/2009 dated 8.12.2009 passed by the Commissioner of Customs &, Central Excise, Ghaziabad)

For Approval & Signature :

Hon'ble Mr. 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Department Authorities?	

Khalik Chataiwala
Ramesh Khanavkar, Manager — Appellant

Vs.

CC, Ghaziabad — Respondent

Appearance:

None - for the Appellant

Shri Govind Dixit, D.R. - for the Respondent

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

F. Order No. 52650-52651/2015

Per R.K. Singh:

These appeals are filed against order in original dated 08/12/2009 in terms of which service tax demand of Rs. 33,14,194/-

was confirmed under Section 28 (1) read with Section 72 of the Customs act 1962 along with interest and penalties.

2. The facts of the case are as under

M/s Oriental Enterprises had a private bonded warehouse for storing duty-free goods. It showed clearance of 72.576 MTs of duty-free polyester yarn to M/s Ganesh Overseas Inc., Ghaziabad (100% EOU) but subsequently the said clearance was shown to have been cancelled and after that it was shown that 72.576 MTs polyester yarn was cleared duty-free to M/s Marvel Fashions. Investigations revealed that the said goods never reached their destination and were diverted. This fact was established from statements of the proprietor of M/s Oriental Enterprises Mr. Khalik Chataiwala, Mr Ramesh Khanavkar Manager of M/s Oriental Enterprises, the proprietor of M/s Ganesh Overseas and the transporter. Thus the duty-free goods were not used for manufacture of export goods and were diverted and therefore the primary adjudicating authority passed the following order:

> " (i) the customs duty amounting to Rs.33,14,194/- (Rs. Thirty three lakhs fourteen thousand one hundred ninety four only) is confirmed against M/s Ganesh Overseas Inc., 135-A, Prakash Industrial Area, Sahibabad, Ghaziabad under proviso to Section 28(1) read with Section 72 of the Customs Act, 1962.
>
> (ii) interest at appropriate rate is demanded on duty amounting to Rs.33,14,194/- from M/s Ganesh Overseas Inc., 135-A, Prakash Industrial Area, Sahibabad,

Ghaziabad under Section 28 and 28AB of the Customs Act, 1962.

(iii) I impose penalty of Rs.33,14,194/- (Rs. Thirty three lakh fourteen thousand one hundred ninety four only) on M/s Ganesh Overseas Inc., 135-A, Prakash Industrial Area, Sahibabad, Ghaziabad under Section 114A of Customs Act, 1962 for violating various provisions of Act, ibid.

(iv) I impose penalty of Rs.10,00,000/- (Rs. Ten lakh only) on Shri Bhagwan Tulsian, Proprietor of M/s Ganesh Overseas Inc., 135-A, Prakash Industrial Area, Sahibabad, under Section 112 of the Customs Act, 1962;

(v) I impose penalty of Rs.5,00,000/- (Rs. Five lakh only) on Shri Khalik Chataiwala, Proprietor of M/s Oriental Enterprises, Village Palaspe, Taluka Panvel, Raigad, Maharashtra, under Section 112 of the Customs Act, 1962.

(vi) The amount Rs.2,00,000/- (Rs. Two lakh only) deposited by Shri Khalik Chataiwala towards security deposit on 21.8.03 under challan dated 21.8.2003, is hereby appropriated against the penalty imposed on him.

(vii) I impose penalty of Rs.2,00,000/- (Rs. Two lakh only) on Shri Ramesh Khanavkar, Manager of M/s Ganesh Overseas Inc. 135-A, Prakash Industrial Area, Sahibabad, under Section 112 of Customs Act, 1962".

3. When the case was taken up for hearing, there was no representation on behalf of the appellants nor was there any request for adjournment. Accordingly we proceed to decide the appeals on merit.

4. In the appeals the appellants have essentially contended that they are not concerned with M/s Ganesh Overseas nor did they clear

any goods to M/s Ganesh Overseas and that they have not done anything wrong.

5. The Ld. Department representative on the other hand stated that :

(a) It has been established by the statements of various persons that the impugned goods cleared duty-free did not reach the destination (which was a 100% EOU) and therefore Customs duty is rightly recoverable and the appellants are liable to penalty as they could not even produce proper transport documents to show that the goods were indeed sent to M/s Marvel Fashions.

(b) The appellants did not even participate in the adjudication process at the primary level.

6. We have considered the contentions of Revenue and perused the facts on record. The appellants herein have filed these appeals against penalties imposed upon them. The proprietor of M/s Oriental Enterprises has inter alia admitted that there was a discrepancy in the transport documents relating to the supply of duty free goods to M/s Marvel Fashions. It is also established that the Manager of M/s Oriental Enterprises made incorrect entries in the records at the instance of its proprietor and in his statement he (the Manager) clearly admitted that he made incorrect entries. As has been the recorded by the primary adjudicating authority the

statements of various persons and the verification done clearly establish that 72.576 MTs of duty-free polyester yarn was not received by any EOU and was diverted into the domestic market. Thus the diverted goods became liable to confiscation and as a result the appellants became liable to penalty under section 112 of the Customs Act. We find the penalties imposed are neither unreasonable nor arbitrary and therefore we do not notice any such infirmity in the impugned order as to require appellate intervention. The appeals are therefore dismissed

(Justice G. Raghuram)
President

(R.K. Singh)
Member (Technical)

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