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: 24/04/2014

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. C/A/51713/2014-CU[DB] dated 03/04/2014

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/80/2009	**C.C. (EXPORT) NEW DELHI** AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
		Name and Address of Respondent
2	C/80/2009	**DHL EXPRESS (INDIA) PVT. LTD.** NEW COURIER TERMINAL, I.G.I. AIRPORT, NEW DELHI.

Other Appellants and Respondents as per Annexure

Copy To

3 Advocate(s) / Consultant(s):

PRAMOD KUMAR RAI, ADVOCATE
ATHENA LAW ASSOCIATES.
808, L&T FLATS,
SECTOR-18B, DWARKA,
NEW DELHI,
110078

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.
DIVISION BENCH
Court No.2

Date of hearing/Decision: 03.04.2014

Appeal No.C/80/2009-Cus
(Arising out of OIA No.CC(A)/Cus/Ex/434/08 dt.20.11.2008 passed by CC(Appeals), New Delhi)

CC, New Delhi — **Appellant**

Vs.

M/s.DHL Express (India) Pvt.Ltd. — **Respondent**

Present for the Appellant: Sh.Rakesh Puri, DR
Present for the Respondent: Shri Kumar Akarshan, Advocate

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

FINAL ORDER No. 51713/2014

PER: D.N.PANDA

Revenue is in appeal against waiver of penalty imposed on the respondent courier who was instrumental for mis-declaration of contents inside consignment. While the documents were passed through X-Ray, packet bearing AWB No.739 0219 130 was found to be suspicious and on detailed examination, Toxic Gas Detection Instrument, Gas Alert Microchip etc. were found (page 10 of appeal folder). Goods so imported did not find place in the manifest.

2. It was submitted by the respondent before authority below that no misdeclaration was committed by the respondent courier. Only it has filed document before Customs.

3. We are ~~surprises~~ surprised how courier makes plea of innocence. Regulation 13(a) of Courier Imports and Exports (Clearance) Regulations, 1998 has casted responsibility on the courier as an agent of consigner/ consignee as the case may be. Once courier becomes an agent, he acts on behalf of principal and what that is done by the principal makes agent liable if the agent is not conscious of his duty. The courier is therefore answerable under law for any omission or commission done at the Customs station as well as for breach of duty under law. We are also surprised to know how the Commissioner (Appeals) found the courier respondent to be innocent when the respondent has failed to enquire the contents of consignment and whether that was lawfully declared.

4. Considering totality of facts and circumstances, imposition of penalty of Rs.1 lakh shall be justified in the fitness of circumstances of the case. Such dose ~~does~~ of penalty is preventive measure to deter recurrence of mischief. We do not even hesitate to say that the breach of duty of aforesaid nature requires action of the Commissioner under Regulation 14 of 1998. There should be no leniency for deviation to the law at the customs station. In view of aforesaid observation, Revenue's appeal is allowed to the extent indicated above.

(Dictated & pronounced in the open court)

22.4.2014 21-4-2014.

(MANMOHAN SINGH) **(D.N.PANDA)**
TECHNICAL MEMBER **JUDICIAL MEMBER**

mk

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: **11/08/2016**

To

Appellant as per address in table below

Respondent as per address in table below

Stay/Misc Order No. **MO/51086/2016-CU[DB]** dated **01/08/2016**

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.**

Deputy/Asstt. **Registrar (CUSTOMS Appeal Branch)**

Name and Address of Respondent

1 C/ROM/53422/2014 C/80/2009 **DHL EXPRESS (INDIA) PVT. LTD.**
NEW COURIER TERMINAL,
I.G.I. AIRPORT, NEW DELHI.

Name and Address of Appellant

2 **-C.C. (EXPORT) NEW DELHI**

Copy To
3Advocate(s) / Consultant(s):

PRAMOD KUMAR RAI, ADVOCATE
ATHENA LAW ASSOCIATES, 808,
L&T FLATS,
SECTOR-18B, DWARKA,
NEW DELHI-110078

4 Bar Association, CESTAT, Delhi
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6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence colony New Delhi-3
7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
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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., B-XI/8183, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society , 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 MS Knowlegde Processing Pvt. Ltd.((Taxmanagementindia.com),FF-19, 1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File 18 Second Folder

11/8/16

Deputy/Asstt. Registrar (CUSTOMS Appeal Branch)

NOTE : The above said matter has been fixed for verification of compliance on ________________ before the Registrar.

DB-D

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Application No. C/ROM/53422/2014-CU(DB)
Appeal No. C/80/2009-CU(DB)

C.C. (Export) New Delhi **....Applicants**

Vs.

M/s. DHL Express (India) Pvt. Ltd. **....Respondent**

Appearance:

Dr. S.K. Sheoran, DR for the Applicants
Shri Puneet Agarwal & Shri Deepak Thakur, Advocate for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri R.K. Singh, Member (Technical)

Date of Hearing: 01.08.2016

MISC ORDER NO. 51086 /2016-CU(DB)

Per Archana Wadhwa:

The ROM application stands filed in respect of final order number 51713/2014 vide which the Revenue's appeal was allowed by setting aside the order in appeal and imposing penalty of Rs.1 lakh on the respondent by observing as under:

"Considering totality of facts and circumstances, imposition of penalty of Rs.1 lakh shall be justified in the fitness of circumstances of the case. Such dose of penalty is preventive measure to deter recurrence of mischief. We do not even hesitate to say that the breach of duty of aforesaid nature requires action of the Commissioner under Regulation 14 of 1998. There should be no leniency for deviation to the law at the customs station. In view of aforesaid observation, Revenue's appeal is allowed to the extent indicated above."

2. The assessee's contention is that Commissioner (A) had rightly set aside the penalty imposed upon them by observing that the respondent, who is a courier service provider had declared the imported goods, on the basis of the declarations made by his customer and there is knowledge on his part. He also submits that the penalty of Rs. 1 lakh imposed upon the appellant had exceeded even maximum penalty under section 112 of the Customs Act.

3. Opposing the prayer, Ld. DR appearing for the Revenue submits that the said order of the Tribunal is an order on merits and was pronounced and dictated in the open court in the presence of the advocate for the respondent. The scope of ROM is limited and cannot touch upon ~~of~~ merits of the case. The order having been passed on merits, it cannot be said that there is any mistake on part of the Tribunal so as to rectify any error. Accordingly, prayer to reject the ROM application.

4. After carefully considering the submission made by both the sides and after going through the grounds of rectification of mistake we find that the same relate to the merits of the case and cannot be said to be mistakes requiring any rectification. It is well settled law that review of the order cannot be sought under the garb of ROM. The mistakes required to be rectified should be ~~given~~ one which are apparent on the record and does not require any long drawn process of arguments by either side.

5. Ld. Advocate's submission that the penalty imposed upon the respondent is not justified cannot be held to be mistake. If the assessee is aggrieved with the said order of the Tribunal he has

within his rights to challenge the same before the Higher Appellate Forum.

6. In view of the foregoing we find no merits in the ROM application and accordingly reject the same.

[Dictated and pronounced in the open Court]

8/8/16

(R.K. Singh)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu