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: **27/10/2014**

To

Appellant as per address in table below

Respondent as per address in table below

<u>Final Order No. **C/A/54085-54090/2014-CU[DB]** dated **13/10/2014**</u>

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/57794/2013	C/57205/2013	**Chander Gauba** Managing Director,m/s V And S Intrenational, 38 Km Stone,behrampur Road,nh-8, GURGAON,DELHI.
2	C/Stay/57795/2013	C/57206/2013	**Deepak Goel** E-4,ashok Vihar,phase-i DELHI-110052
3	C/Stay/57943/2013	C/57339/2013	**J S Designer Ltd** 190,patparganj Industrial Area NEW DELHI-110092
4	C/Stay/57944/2013	C/57340/2013	**Anuradha Singhal** Director,m/s J.s.designer Ltd 190,patparganj Industrial Area NEW DELHI-110092
5	C/Stay/58092/2013	C/57510/2013	**Vikas Mohan Singhal** Director,m/s J.s.designer Ltd 190,patparganj Industrial Area NEW DELHI-110092
6	C/Stay/59622/2013	C/58971/2013	**Pradeep Sharma** R/o.rz-45,q Extension, Uttam Vihar, Uttam Nagar DELHI
			Name and Address of Respondent
7			**Commissioner of CUSTOMS-New Delhi(prev)** PREVENTIVE CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI,

P.T.O.

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

COURT NO. III

DATE OF HEARING/DECISION : 13/10/2014.

Customs Stay Application Nos. 57794-57795, 57943-57944, 58092 and 59622 of 2013 in Appeal Nos. 57205-57206, ~~4~~57339-~~4~~57340, 57510 and 58971 of 2013

[Arising out of the Order-in-Original No. 05/SU/Commr/2013 dated 30/01/2013 passed by The Commissioner of Customs (Preventive), New Delhi.]

For Approval and signature :
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Rakesh Kumar, Member (Technical)

1.	Whether Press Reporters 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 their Lordships wish to see the fair copy of the order?	:	Seen
4.	Whether order is to be circulated to the Department Authorities?	:	Yes

Shri Chander Gauba, M.D. – M/s V&S International]
Shri Deepak Goel, ngh Sandhu, M.D.]
M/s J.S. Designer Ltd.] Appellants
Ms. Anuradha Singhal, Director]
Shri Vikas Mohan Singhal, Director]
Shri Pradeep Sharma]

Versus

CC, New Delhi (Prev.) Respondent

Appearance

S/Shri Pradeep Jain, Tarun Chawla and Ms. Reena Rawat, Advocates – for the Appellants.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No. 54085-54090/2014 Dated : 13/10/2014

Per. Archana Wadhwa :-

After dispensing with the condition of pre-deposit in all the cases, we proceed to decide the appeals itself in as much as we are of the view that the impugned order has been passed in gross violation of principles of natural justice.

2. Briefly stated the facts of the case are that M/s J.S. Designer Ltd. filed shipping bills for export of the fabric meant for ladies garments by declaring the value of the overall consignment to be around Rs. 35 crores approximately. The exports were under DEPB scheme.

3. After examination of the goods, Revenue was of the belief that the value declared by the appellant was on the higher side. Accordingly, the consignment was detained and investigations were initiated. During the course of investigations, statements of various persons, who had supp-lied the grey fabric to the appellant, were recorded. Experts opinion were also obtained as also the information filed before the Export Promotion Counsel/ Delhi/Chamber of Commerce was obtained. Based upon all the evidences so collected, proceedings were initiated against them

alleging over valuation of the export consignment and proposing to reduce the value, alongwith the proposal to impose penalties.

4. During the course of adjudication, the appellant made a prayer for cross-examination of the deponents whose statements were recorded and relied upon. Such request of the appellant was rejected by the Commissioner and communicated to the appellant by the letter dated 19/11/12 written by the Superintendent (Adjudication), communicating the Commissioner's decision. The said letter was challenged by the appellant before the Hon'ble Delhi High Court, who disposed of the same vide their ~~letter~~ order dated 7th December, 2012 by accepting the appellant's prayer to withdraw the same with liberty to raise the objections before the original Adjudicating Authority or if need be before the Appellate Authority.

5. The appellant filed an appeal before the Tribunal against the said denial of cross-examination communicated vide letter dated 19/11/12. The Tribunal vide its order dated 24/12/12 rejected the appeal on the ground that the said letter is not in appealable form, but is an administrative communication, which cannot be challenged under Section 129 of the Customs Act.

6. In the meanwhile the consignment detained by the Customs was allowed to be exported, in terms of the Delhi High Court's directions and ~~binds~~ as ~~pray~~ per the appellant, they have

received the entire consideration of the same from their foreign buyer.

7. In view of the above developments, the appellant again made a request for cross-examination of the witnesses before the Adjudicating Authority. The said request of the appellant stands denied by him, by observing as under :-

> "There is no need of cross-examination of persons whose statements were relied upon as the statements were recorded under Section 108 of Customs Act and had not been retracted so far. No need was felt to call Assistant Director of Textile Committee and Cost Accountants as these were experts of their field and had given their independent opinion when sought, without any vested interests. Noticee Pradeep Sharma, CHA wrote in his reply dated 03/12/12 that what ever he has stated in his earlier statement was true and he has nothing further to add".

8. Accordingly, after rejecting the request, the impugned order stands passed imposing penalties of Rs. 35 crores on M/s J.S. Designer Ltd., Rs. 10 crores on Shri Vikas Mohan Singhal, Director of the Exporting Firm and ~~all~~ various amounts on the other applicants who are Director's wife, one of the applicant is suppliers of the materials etc. The appellant's grievance is that the Commissioner has relied upon statements of various persons recorded during investigation, without testing the veracity of the same by the tool of cross-examination. We find that the Commissioner has not allowed cross-examination of the deponents, whose statement were relied upon, on the ground that the said

statements were recorded under Section 108 of the Customs Act and have not been retracted. We are afraid that we find no merits in the said observation of the Adjudicating Authority. Every statement, during the course of investigations in matters related to Customs, is recorded under Section 108 of the Customs Act only and if the said ground is adopted as a reason for denial of cross-examination, there would be never ever be any cross-examination of any deponent during the proceedings. This cannot be allowed to be happened. Learned DR, at this stage draws our attention to the previous order passed by the Tribunal on 11/2/14, wherein appellant was directed to file a summary to show how opportunity of cross-examination shall either vary or modify the adjudication and if so, to what extent since no fundamental submissions are made by Shri Jain as to the need of the cross-examination and justification thereof. Two weeks time was given to the Counsel to file summary on record. Shri Dixit submits that summary has been placed on record by the learned Advocate, which has been sent to the Commissioner for his comments. He submits that they have not received the comments and the matter may be taken after the receipt of the comments by the Commissioner.

9. We find no merits in the above contention of the learned DR. First of all, we note that request for cross-examination of the witnesses was made as their statements were relied upon by the Revenue. It is well settled law that the deponents of the statements, which are being used against the assessee are

required to be produced ~~for~~ as witnesses so as to test the veracity of the same, the assessee cannot be expected to pre-disclose the outcome of the said cross-examination, as is being argued by the learned DR. Further we find in the last order of the Tribunal, there is no directions of the Revenue to seek comments from the Commissioner. The only direction was to the Advocate to place on record the summary of the grounds for cross-examination which stand placed on record by the learned Advocate.

10. At this stage, we find that the Tribunal in the case of **Swiber Ofshore Construction Pvt. Ltd. vs. CC, Kandla** reported in **2014 (301) E.L.T. 119 (Tri. – Ahmd.)** in an almost identical case of over valuation, has held that the witnesses whose statements were recorded under Section 108 of the Customs Act, 1962 and opinion of the experts relied upon in the show cause notice are required to be produced for cross-examination in terms of Section 138B of the Customs Act, 1962. The Tribunal, for holding so, relied upon various decisions including the Hon'ble Delhi High Court decision in the case of **Basudev Garg. Vs. Commissioner** reported in **2013 (294) E.L.T. 353 (Del.)** as also in the case of **J.K. Cigarettes Ltd. vs. Commissioner** reported in **2009 (242) E.L.T. 189 (Del.)**.

11. The situation in the present case is identical. The Revenue by not allowing the cross-examination of the witnesses and the experts whose statements and opinions are being relied upon by them, have committed the gross violation of principles of natural

justice. On this limited ground and without expressing any opinion on the merits of the case, we set aside the impugned order and remand all the appeals to the Adjudicating Authority for fresh decision. Needless to say that the relevant witnesses would be produced for cross-examination. Stay petitions as also appeals get disposed of in above manner.

(Dictated and pronounced in open court.)

17/10/14

(Archana Wadhwa)
Member (Judicial)

20/10/14

(Rakesh Kumar)
Member (Technical)

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