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

Appeal No. C/598 /2008 - CU[DB], C/COD/267/2008-CUS., C/S/1793/08-CUS. Date 10/10/2008

Assistant Registrar
C.E.S.T.A.T. New Delhi

To :
M/S TRENDS LEATHER,
(PROPRIETOR MR. NAUSHAD ALAM), 30-A,
IDGAH, ROAD, JAJMAU, KANPUR.
M/S TRENDS LEATHER, Appellant

Vs

C.C.E. KANPUR S.O. NO.C/306/08 & M.O. NO.C/56/08 Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/374/08-CUS. DATED 23.09.08

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
C.C.E. KANPUR, 117/7,
SARVODAYA NAGAR, KANPUR 208005.

2. Adv. / Consult MR.L.P. ASTHANA & MS REENA KHAIR,
R-163, SECOND FLOOR, GREATER KAILASH-1,
NEW DELHI - 110 048.

3 S.D.R
4 J.C.D.R.
5 Bar association. CESTAT. New Delhi
6 M/s. Deeparchi Publications. M-93. Marg. 46. Saket. New Delhi 110017
7 M/s Centax Publictions (P) Ltd.. 1512-B. Bhishm Pitamah marg. Opp. ICICI Bank of Defence Colony. New - 3
8 Excise & Customs cases. B-37. Sector -1. NOIDA - 201301 Gautam Budh Nagar. (U.P.)
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 Nidheshak publications. I.P.Estate. new Delhi
11 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033. No.70(Old No. 88). Thyagaraya Road. T. Nagar.Chennai
13 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 Office Copy
16 Guard file

Assistant Registrar
(Customs Appeal Branch)

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

Customs Appeal No. 598 /2008 with
Customs COD Application No. 267 /2008
Customs Stay Application No. 1793 /2008

[Arising out of Order-in-Appeal No. 176-Cus/APPL/KNP/2008 dated 30.4.2008 passed by Commissioner (Appeals), Customs & Central Excise, Kanpur]

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it should 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 Departmental authorities? :

M/s. Trends Leather — Appellant

Vs.

Commissioner of Customs & Central Excise, Kanpur — Respondent

Appearance:

Mr. L.P. Asthana, Advocate for the Appellant
Mr. L.B. Yadav, DR for the Respondent

CORAM:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing : 23.9.2008

Final **ORDER NO.** C/374/08
Stay Order C/306/08
Misc Order C/56/08

Per Justice S.N. Jha (for the Bench):

After hearing the parties the delay of two days in filing the appeal is condoned.

2. The appeal was then taken up for hearing in the stay matter. After making submissions for a while, parties agree that appeal itself may finally be disposed of.

3. The dispute relates to draw back claim in respect of shipping bill No. 2601 dated 17.10.06. The Assistant Commissioner, Customs by order dated 2.1.08 rejected the draw back claim and imposed penalty of Rs.3,48,284/- on the appellant in terms of Section 114-AA of the Customs Act. On appeal by the appellant the Commissioner (Appeals) passed the following orders:

> "I set aside the rejection order and order that the drawback claim should be immediately processed on the basis of available documents."

No finding one way or the other however was recorded on the point of penalty. The Department interpreted the said order of the Commissioner (Appeals) dated 30.4.08 as not interfering with the imposition of penalty and took steps to recover the amount. The appellant filed another appeal before the Commissioner (Appeals) which was dismissed by order dated 9.7.08 observing that with the disposal of the earlier appeal (supra) he had become functus officio and could not decide the appeal afresh. The appellant has now come to the Tribunal on the point of penalty.

4. After hearing the parties we waive the requirement of pre-deposit of the amount and proceed to dispose of the appeal finally as hereinbelow.

5. learned Counsel for the appellant submitted that the rejection of the draw-back claim having been held to be improper by the Commissioner (Appeals) after recording favouring findings, the Department cannot recover penalty. Counsel submitted that imposition of penalty was consequence of the rejection of the draw back claim and if, as per the remand order, the Assistant Commissioner had to denovo consider the draw back claim, the penalty cannot be recovered till a fresh decision is arrived at on the draw back claim.

6. We find merit in the submissions of the Counsel. We may refer to the relevant findings of the Commissioner (Appeals) as under:-

> "In the scenario, following points are now beyond dispute:-
>
> - The goods were actually exported;
> - The copy of export contract/letter of credit is on record;
> - The copy of invoice and packing list is available on record;
> - The insurance certificate is available on record, as the same was never under dispute;
> - The bill of lading issued by M/s. P.S. Bedi & Co. Pvt. Ltd. alongwith certification regarding clerical error in mentioning the correct shipping bill number is available on record;
> - The freight amount paid to the shipping line through bank draft is available on record;
> - The bank realisation certificate and the certification of the bank regarding correct shipping number is available on record.
>
> I observe that nothing else is required to submit the drawback claim now on the basis of available documents, which could have been procured at the earlier stage also, had the discrepancies been pointed out to the exporter."

7. In view of the findings recorded by the Commissioner (Appeals), we are satisfied that penalty had to be kept in abeyance until the issue of draw back claim is decided afresh. We accordingly, direct that while considering the draw back claim afresh pursuant to the remand order, the Assistant Commissioner may consider the desirability of imposing penalty. Till decision is taken, the previous order dated 2.1.08 in the matter of penalty shall remain in abeyance.

8. The appeal stands disposed of.

(Dictated & pronounced in the open Court)

(Justice S.N. Jha)
President

(M. Veeraiyan)
Member(Technical)

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