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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/211 /2006 - CU[DB] Date 20/10/2008

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

To :
NARESH KUMAR JAIN
595, HOUSING BOARD COLONY, ROHTAK
(HARYANA)

NARESH KUMAR JAIN — Appellant

Vs

COMMISSIONER OF CENTRAL EXCISE,ICD,
TUGHLAKABAD, N — Respondent

I am directed to transmit herewith a certified copy of **Final order** No.C/394/08-CUS. DATED 03.10.2008

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
   COMMISSIONER OF CENTRAL EXCISE,
   ICD, TUGHLAKABAD, NEW DELHI
2. Adv. / Consult MR.P.C.JAIN, ADV., 332,
   ARAVALI APARTMENTS,
   ALAKNANDA, NEW DELHI-19
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:3.10.2008

Customs Appeal No.211 of 2006

Arising out of the order in original No.112/05 dated 29.12.2005 passed by the Commissioner ,Customs , New Delhi.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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 Departmental authorities?	Yes

Appellant | Respondent
M/s Naresh Kumar Jain vs. C.C., New Delhi

Appearance:

Shri P.C. Jain, Advocate for the appellant
Shri Fateh Singh, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final Order No. C/394/08

Per M. Veeraiyan:

This appeal is against the order of the Commissioner No.112 of 2005 dated 29.12.2005 by Shri Naresh Kumar Jain proprietor of M/s M.L. Enterprises against penalty of Rs.2.5 lakhs imposed on the said firm M/s M.L. Enterprises and a separate penalty of Rs.50,000/- on Shri Naresh Kumar Jain.

2. Heard both sides.

3. The relevant facts, in brief, are as follows:

a) Shri Vijay Kumar Gupta, co-brother of Shri Naresh Kumar Jain, made exports by highly inflating the value of export consignments with view to get extra DEPB benefits ; the inflated sale proceeds were received from the foreign buyers by sending in an unauthorized manner money from India, with the help of one Manoj Garg.

b) Vijay Gupta has used a few firms for the purpose of making such fraudulent exports including M.L. Enterprises.

c) At the time of investigation, Shri Naresh Kumar Jain vide his statement dated 26.8.2003 made detailed submissions about the firm M/s M.L. Enterprises and the exports made in that name. He admitted that he started his own business of manufacturing sanitary and bathroom fittings on job work basis; from April, 2003 he started manufacturing in his factory i.e. M/s M.L. Enterprises; the premises of M.L. Enterprises was owned by Shri Sunitha Gupta wife of Shri Vijay Kumar Gupta and he paid no rents to her; there were 42 persons working on contract basis; he invested about Rs.30 lakhs for purchase of machinery. When questioned about the export documents relating to export made in the name of his firm, he admitted that the value was inflated by six times compared to the actual market value; the manipulation has been done to avail DEPB benefits; that he had done so just to earn more money out of his greediness.

d) The Commissioner by the impugned order ordered confiscation goods exported vide shipping bill No.1298467 dated 30.7.03 but offered redemption of the same on payment of fine of Rs.2 lakhs. He imposed penalty a Rs.2.5 lakhs on M/s M.L. Enterprises. He also imposed a penalty of Rs.50,000/ on Shri Naresh Jain.

e) The other parts of the impugned order concern other parties and not relevant to the present proceedings.

4.1. The learned Advocate submits that Shri Vijay Gupta is the main person behind the export fraud, if any; he only arranged the procurement of export goods; fixed the CHA and arranged for receiving export sale proceeds. Shri Naresh Kumar Jain has not dealt with any export goods liable for confiscation. No penalty can be imposed on him.

4.2. Shri Naresh Kumar Jain is a proprietor "only on paper". He also draws our attention that M/s Sunitha Gupta has signed as proprietor of M/s M.L. Enterprises in the returns filed with the sale tax department. He also submits that Shri N.K. Jain has retracted his statement while he was in jail under judicial custody.

4.3. He also submits that the is not exercising the option of redemption of the confiscated goods.

5. The learned DR reiterated the findings of the Commissioner.

6. We have carefully considered the submission from both sides. It was not disputed that Shri Naresh Kumar Jain has taken Import-Export code in the name of M.L. Enterprises and that he opened Bank account in the name of M.L. Enterprises. He has also admitted that manufacturing on job work basis goods in M.L. Enterprises. He has also admitted having invested Rs.30 lakhs for machinery for M/s M.L. Enterprises. Therefore, the claim that he was proprietor on paper is not appreciated. He also admitted that the value was inflated six times with a view to get extra DEPB benefits out of greediness. His retraction which was forwarded by letter dated 29.8.03 by Superintendent of Tihar Jail, New Delhi makes bald denial without specifically retracting any relevant point in his statement. Therefore, the same should be treated as an after-thought. It was also submitted that he is not claiming release of the confiscated goods. With out expressing any view on the role of others in the export fraud, the role of Shri Naresh Kumar Jain in export fraud

to get undue DEPB benefit by inflating export value in respect of exports in the name of M/s M.L, Enterprises cannot be overlooked or underestimated. However, no separate penalty on N.K. Jain is warranted when the proprietary concern M/s M.L, Enterprises with N.K. jain as proprietor is imposed a penalty.

7. Taking the entire facts and circumstances into account , we set aside the separate penalty of Rs.50,000/- on Shri N.K. Jain. The penalty of Rs.2.5 lakhs imposed on the proprietary concern M/L. Enterprises is reduced to Rs.1 lakhs (rupees one lakh).

8. The appeal is disposed on the above terms.

(Pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K.Das)
Member (Judicial)

scd/