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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/335 /2005 - CU[DB] Date 23/10/2008

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

To :
M/S REKOGNATION

94/10, AJAY PATH, KHUMBA MARG, PRATAP
NAGAR, SANGANER, JAIPUR

M/S REKOGNATION Appellant

Vs

COMMISSIONER OF CUSTOMS, JAIPUR Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/414 2008 CU[DB] dated 11.06.08

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
   COMMISSIONER OF CUSTOMS, JAIPUR
   NCR BUILDING, STATUTE CIRCLE, C-SCHEME,
   JAIPUR -302 005
2. Adv. / Consult
   MR.L.P ASTHANA, ADV., 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-1
15 Office Copy
16 Guard file

Assistant Registrar

(Customs Appeal Branch)

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. II
Customs Appeal No. 335 of 2005

[Arising out of the Order-in-Original No. 01/2005-Cus dated 20/01/2005 passed by The Commissioner of Customs, Jaipur.]

For Approval and signature :

Hon'ble Shri S.S. Kang, Vice President
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?	:
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?	:.

M/s Rekognation — Appellant

Versus

CC, Jaipur — Respondent

Appearance

Shri L.P. Asthana, Advocate – for the appellant.

Shri R.K. Verma, Authorized Representative (DR) – for the Respondent.

CORAM:**Hon'ble Shri S.S. Kang, Vice President**
Hon'ble Sh. Rakesh Kumar, Member (Technical)

DATE OF HEARING : 11/06/2008.

Final Order No. C/414/08 Dated : 11/6/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the impugned order, whereby 23025 jute bags were confiscated on the ground that the exporter declared higher FOB value. The goods were ordered to be redeemed on payment of redemption fine of Rs. Two lakhs and penalty of Rs. Fifty thousand was imposed. Brief facts of the case are that appellant filed a shipping bill in respect of export of 23025 pieces of LDPE laminated 100% Jute bags under DEPB scheme. Under the DEPB scheme, the exporter is entitled for the benefit on weight basis. The case of the revenue is that taking into consideration the invoice value of the goods, the appellant declared the higher value of the goods at the time of export and as the value was not correctly mentioned in the shipping bills, therefore, the goods are liable for confiscation.

2. Contention of appellant is that they got order for supply of fancy jute bags and the jute bags were purchased from Calcutta

and transported to Jaipur. Thereafter, the name and logo of the customer was printed on those jute bags. During the checking of the bag prior to export, there ~~was~~ were certain bags found not up to the quality and were rejected for export. As the appellant in addition to the purchase price paid also done value addition i.e. for printing logo and name of the customer and also paid transportation and insurance charges, therefore, it cannot be said that the value was inflated. It is also submitted that the value of the exported goods is not related to the DEPB claim. The DEPB claim is on the weight basis and there is no discrepancy in the weight mentioned in the shipping bill. In these circumstances, the contention is that the confiscation of the goods is not sustainable.

3. Contention of revenue is that exporter is duty bound declared to the correct value of the exported goods. The revenue relied upon in respect of the goods in the case of **Om Prakash Bhatia vs. Commissioner of Customs, Delhi** reported in **2003 (155) E.L.T. 423 (S.C.)** to submit that in case of mis-declared of exported goods, the goods are liable for confiscation. The contention of revenue is also that

appellant themselves admitted that the goods were purchased at much less price than shown in the shipping bills.

4. We find that in this case, appellant declared the FOB value on the basis of their cost. The goods were purchased at Calcutta and transported to Jaipur. The jute bags in question were subsequently printed with the logo and name of the customer. It is also pleaded by the appellant that there is rejection of jute bags due to bad quality. The appellant filed their costing data before the lower authorities which includes the cost of rejected bags, packing, transportation and insurance from Calcutta to Jaipur and value addition. Further, we find the value of the goods declared in the shipping bills have no co-relation with the DEPB claim. This fact is admitted in the para '15' of the adjudication order by the Commissioner of Customs. The revenue heavily relied upon the case of Om Prakash Bhatia (Supra). We find in the case of Om Prakash Bhatia (Supra), the exporter inflated the value of goods in the shipping bills to claim higher draw back and the exporter also admitted that market value of the goods is much less than the mentioned in the shipping bills. In the present

case, there is no issue of higher draw back claim. Further, we find that in the case of **Commissioner of Customs, New Customs House, Mumbai vs. Vishal Exports Overseas Ltd.** reported in **2007 (209) E.L.T. 331 (S.C.)**, The Hon'ble Supreme Court after considering the decision in the case of Om Prakash Bhatia, held that FOB value being 150% of the purchase value is not un-reasonable in case when consideration amount is received. In the present case also there is no dispute that exporter have received the consideration amount from abroad. In these circumstances, as the value declared in the shipping bill has no relevance with the DEPB benefit, which is on the weight basis, therefore, we find that the confiscation of the goods on the ground that the FOB value has been mis-declared is not sustainable hence set aside. The appeal is allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Rakesh Kumar)
Member (Technical)

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