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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/166/2006 - CU[DB] Date 10/11/2008

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

To :
NARENDER CHAUHAN
SON OF SHRI J.P.CHAUHAN, RESIDENT OF 138,
SUMMON BAZAR, JANGPURA, BHOGAL,
NEW DELHI - 110044

NARENDER CHAUHAN Appellant

Vs

COMMISSIONER, CENTRAL EXCISE,DELHI-3,
GURGAON Respondent

I am directed to transmit herewith a certified copy of Final order No. C/564/08-CUS. DATED 06.10.08 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, CENTRAL EXCISE,
DELHI-3, GURGAON
2. Adv. / Consult
MR.S.NAGRATH, ADV. CHAMBER NO.190,
PATIALA HOUSE COURTS, NEW DELHI.
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R.K.Puram, New Delhi-110066.
Principal Bench, New Delhi.

C/166/06-Cus

[Arising out of Order-in-Original No.34/CE/2005 dt.30.11.05 passed by the Commissioner of Customs, Delhi-3)

For approval and signature:
Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. 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: :

Sh. Narender Chauhan Appellant

Versus

Commissioner of Customs, Delhi-3 Respondent

Appearance
Ms. Sonam Nartha, Adv. For appellant
Shri L.B.Yadav, Authorised Departmental Representative(DR) For respondent

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr. RAKESH KUMAR, MEMBER (TECHNICAL)

Final

Date of decision: 6.10.08
Order No. C/564/08

Per S.S.Kang:

Heard both sides. The appellant filed this appeal against the impugned order whereby penalty of Rs.2 lakhs has been imposed under Section 14 of Customs Act. Brief facts of the case are that M/s. Kay Am Enterprises filed shipping bills with drawback claim in respect of readymade garments. It was found that the goods exported were lying unclaimed at the port of export. Investigation was conducted and it was found that exported goods were over valued to claim higher rate of drawback. The adjudicating authority confiscated the goods and gave option to the owner to redeem the goods on payment of redemption fine drawback claim of Rs.10,85,948/- was disallowed and penalties were imposed.

2. The contention of the applicant is that he is only employee of M/s. Sky Lines Transhipment(P) Ltd. and there is no evidence on record that he got any benefit for export of the goods in question. Being employee, he is simply obeying the direction of the employer. It is also submitted that though in his statement under Section 108 of the Customs Act, he ~~is~~ admitted that he manipulated the ~~original~~ certificate of origin issued by Delhi Chamber of Commerce and also narrated the modus operandi in respect of the export of goods to claim of higher draw back, the statement was retracted by appellant. The contention is that retracted statement cannot be made basis for imposition of penalty. As the appellant being an

employee in the company, he was falsely implicated in this false concocted case against him.

3. The contention of the Revenue is that in this case shipping bills were filed declaring higher value of the goods to get higher draw back claim. During investigation the present appellant narrated the sequence of events in respect of export to get fraudulent draw back. It is also admitted that consignment was made to fake consignee. The appellant also admitted that he has been instrumental in tampering with material particulars such as unit price of individual item and FOB value of the goods in the original certificates issued by Delhi Chamber of Commerce. This fact is corroborated by Shri Dilip Kumar who is also employees of the same employer. The revenue also submitted that the statement was recorded on 13.3.03 and the appellant was arrested and produced before the Jurisdictional Magistrate and he filed a bail application which was rejected on 2.4.03. As the appellant have opportunity to say that the statement was recorded under coercion when he was produced before the judicial Magistrate or at the time of bail application therefore, the retraction was only a thought.

4. We find during investigation it has come on record that he has been instrumental in tampering with material particulars such as unit price of individual item and FOB value of the goods in the ~~original~~ certificates of origin issued by Delhi Chamber of Commerce. The goods were exported by declaring higher value to get higher draw back claim and this fact is

corroborated by another employee of the same firm. In respect of retraction, we find that the statement was recorded on 13.3.03. Subsequently, the appellant was produced before the Judicial Magistrate and bail application was recorded on 2.4.03. Till then the appellant had not made any retraction. It is subsequently on 24.4.03, the appellant made a complaint that this statement was recorded under duress and threat. Hence the appellant has failed to show that there was threat or duress, ~~which appellant failed to prove.~~ In these circumstances, we find no merit in the contention of the appellant. After taking into facts and circumstances of the case, we find penalty of Rs.one lakh will meet the end of justice. The impugned order is modified to that extent only. The appeal is disposed of as indicated above.

Order dictated in the open Court.

(S.S.Kang)
Vice President

(Rakesh Kumar)
Member Technical

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