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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/382 /2006 - CU[DB] Date 20/11/2008

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

To :
COMMISSIONER OF CUSTOMS(PREV.)
CUSTOMS HOUSE, C.R.BUILDING, THE MALL,
AMRITSAR
143001

COMMISSIONER OF CUSTOMS(PREV.) Appellant

Vs

M/S. GARG FORGING AND CASTING LTD. Respondent

I am directed to transmit herewith a certified copy of Final order No.C/607/08 CU[DB] dated 10.11.08 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

M/S. GARG FORGING AND CASTING LTD.

VILL. KANGANWAL ROAD, JUGIANA, LUDHIANA.

2. Adv. / Consult

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

COURT – III

CUSTOMS APPEAL NO. 382 OF 2006

[Arising out Order-in-Original No. 17/Cus/2005 dated 14.3.2005 passed by the Commissioner of 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 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 Departmental authorities?	Yes

CCE, Amritsar — Appellant

Vs.

M/s. Garg Forging & Casting Ltd. — Respondents

Appearance:

Shri Sumit Kumar, Departmental Representative, for the Revenue,
None for the respondents

Coram:

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

Date of Hearing: 10th November, 2008

FINAL ORDER NO. C/607/08 **dated** 10/11/08

Per M. Veeraiyan:

Heard both sides.

2. This is an appeal against the Order of the Commissioner No. 17/Cus/2005 dated 14.3.2005, in so far as the same relates to not confiscating the offending goods and not imposing redemption fine in lieu of confiscation.

3.1. The Commissioner held that the exporters have mis-declared the nature, quality and value of the goods exported and accordingly ordered recovery of draw-back claim amounting to Rs. 3,68,18,331/- in respect of goods valued Rs. 6,31,29,863/- already exported and in respect of which draw-back claims have already been settled and paid to the exporters. By the said order he also disallowed the draw-back claim amounting to Rs. 1,25,04,440/- in respect of goods valued Rs. 2,11,39,342/- which have already been exported but the draw-back claims were pending to be settled. He has also imposed penalties on various parties held by him as concerned in the fraudulent exports.

3.2. In the connected case, in respect of seizure of 16 containers of goods mis-declared which were separately subjected to adjudication, the offending goods were absolutely confiscated.

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3.3 Grievance of the department is that the Commissioner having held that the goods were liable for confiscation have not directed them to pay fine in lieu of confiscation.

4. We find that the goods relating to which draw-back had been wrongly claimed and paid and as well as goods relating to which the draw-back claims were pending had already been exported. Therefore, the goods related to the impugned order dated 14.3.2005 were not available for seizure during the investigation. When the goods have already gone out of the country, the question of confiscation of the said goods does not arise.

5.1 Section 125 of the Customs Act reads as follows:-

"SECTION 125. Option to pay fine in lieu of confiscation. – (1) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it may, in the case of any goods, the importation or exportation whereof is prohibited under this Act or under any other law for the time being in force, and shall, in the case of any other goods, give to the owner of the goods [or, where such owner is not known, the person from whose possession or custody such goods have been seized,] an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that, without prejudice to the provisions of the proviso to sub section (2) of section 115, such fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon.

(2) Where any fine in lieu of confiscation of goods is imposed under sub-section (1), the owner of such goods or the person referred to in sub-section (1), shall, in addition, be liable to any duty and charges payable in respect of such goods.]"

5.2 From the above, it is seen that once the goods are confiscated, one of the modes of disposal is allowing redemption to the original owner or the person from whose custody the goods were seized, on payment of fine in lieu of confiscation. The possession of goods confiscated is required to be taken over by the adjudicating authority. The fine in lieu of confiscation imposed is in the nature of an option. If the party does not pay redemption fine, the only option available to the department is to take over the goods and dispose of the goods. The reasoning given by the Commissioner in not confiscating the goods is valid and there is no justification for interfering with the same. His finding that the goods were liable for confiscation was to enable him to impose penalties on the persons who have dealt with the goods which were so held liable for confiscation.

6 In view of above, appeal by the department is rejected.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNICAL)

(P.K. DAS)
MEMBER (JUDICIAL)

Dated 10th November, 2008

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