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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/289 /2006 - CU[DB] Date 28/11/2008

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

To :
M/S. S.K.ENTERPRISES
15/6, KAMRUDDIN NAGAR,
NANGLOI, DELHI - 110 041.

M/S. S.K.ENTERPRISES Appellant
Vs
THE COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/623 2008 CU[DB] dated 20.11.08

passed 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
   THE COMMISSIONER OF CUSTOMS
   ICD, TKD, NEW DELHI
2. Adv. / Consult MR. A.K. BABBAR, ADV.
   F-51, NARAINA VIHAR,
   NEW DELHI – 28.

3 S.D.R
4 J.C.D.R.
5 I[illegible] 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). Thyagarava 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 NEW DELHI

Customs Appeal No.289 of 2006 Customs Branch

[Arising out of Order-in-Original No.14/2006 dated 07.02.2006 passed by the Commissioner of Customs, New Delhi]

Date of Hearing/ Decision:20.11.08

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 CESTAT (Procedure) Rules, 1982.		NO
2.	Whether it should 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

M/s. S.K. Enterprises ...Appellants
[Rep. by Shri A.K. Babbar, Advocate]

Vs.

CC, New Delhi ...Respondent
[Rep. by Shri L.B. Yadav, DR]

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

Final Order No. C/623/08 Dated:20.11.2008

Per M. Veeraiyan

The Appellants imported Tin plate sheets and filed Bill of Entry claiming them as Electrolytic Tin Plates (Prime Grade) falling under Chapter Heaidng No.72121090 attracting duty @ 5% BCD and other levies. However, the detailed examination, on the basis of intelligence, undertaken by SIIB indicated that they were not Prime materials but of

Secondary Tin plates sheets attracting higher rate of 20% BCD besides other levies. Further, import licence was required for import of secondary Grade Tin Sheets. The Appellants admitted to the mis-declaration and sought clearance. The Commissioner vide impugned order confiscated the goods valued Rs.35,10,876/- but allowed redemption on payment of fine of Rs.4,25,000/-. He also imposed penalty of Rs.80,000/- on the appellants. He disallowed the claim for exemption to lower rate of duty applicable to Prime Tin Plates.

2. Ld. Advocate submits that reliance placed on the second examination report by SIIB overlooking the first report by the Examining officers is not justified. The admission regarding mis-declaration was due to the fact that the goods were required urgently by them and that they were incurring heavy demmurage. He seeks setting aside the order of the Commissioner. Alternatively, he submits that the redemption fine and penalty imposed are excessive and leniency may be shown.

3. Ld. DR submits that it is a case of mis-declaration with a view to avoid lower rate of customs duties and requirement of licence. The Mill Test Certificate enclosed for clearing the goods was not issued by the Mill but by the Trader himself. Further, the Prime quality was found to have been imported at US$1030 p.m.t. Thus the price declared by the appellant being only US$700 p.m.t. goes to prove that the imported material is of secondary grade only.

4. We have carefully considered the submissions from both the sides. We find that the price of US$700 p.m.t. declared by them for the consignment imported by them is very low compared to the price of 1030 p.m.t. for prime materials and the same is a clear indication that the goods imported by them cannot be of prime material. We do not see any justification for such wide variation in price for prime quality materials imported. Further, we find that the Mill Test certificate is an invalid one having been issued by the Trader and hence not reliable. Above all, the appellants have admitted to the mis-declaration and retraction at this stage looks to be an afterthought.

5. However, considering the value of the goods involved & the quantum of duty sought to be evaded, we find that the plea for reduction in redemption fine and penalty requires favourable consideration.

6. Accordingly, the appeal is disposed of as follows:-

(a) The demand of duty confirmed by the Commissioner is upheld.

(b) Confiscation of the goods for having been imported without the licence is upheld but the redemption fine is reduced from Rs.4,25,000/- to Rs.1,50,000/- and the penalty is reduced from Rs.80,000/- to Rs.50,000/-.

Order dictated & pronounced in open court on 20.11.2008.

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)

Ckp.