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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/232 /2006-233 /2006 - CU[DB] Date 17/12/2008

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

To :
COMMISSIONER OF CUSTOMS
ICD, TKD, NEW DELHI
COMMISSIONER OF CUSTOMS Appellant

Vs

SH. NATHULAL MEENA, INSPECTOR (NOW SUPDT.) Respondent

I am directed to transmit herewith a certified copy of **Final order No. 665-666/08-CUS. DATED 05.12.08** 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 SH. NATHULAL MEENA, SUPERINTENDENT,
CENTRAL EXCISE, JAIPUR COMMISSIONERATE,
STATUE CIRCLE, C-SCHEME, JAIPUR (RAJASTHAN)

2. Adv. / Consult MR. L.P. ASTHANA, ADV.
R-163, (S.F.). G.K. – I, NEW DELHI – 48.

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 Vidheshak 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

17. SH. G.S.CHARPOTA, SUPERINTENDENT
CENTRAL EXCISE, JAIPUR COMMISSIONERATE,
STATUE CIRCLE, C-SCHEME, JAIPUR (RAJASTHAN)

Assistant Registrar
(Customs Appeal Branch)

# CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

**COURT-III**

**Date of hearing/decision:5.12.2008**

**Customs Appeal No.232-233 of 2006**
**with Cross-Objection Nos.200-201 2006**

Arising out of the order in original No.70-71/2005 dated 30.8.05 passed by the Commissioner of Customs , ICD, TKD, 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 | | Respondents

C.C., ICD, TKD,
New Delhi

vs.

1. Shri G.S.Charpota and
2. Shri Nathu Lal Meena,

Appearance:

Shri Sunil Kumar , Authorized Departmental Representative (DR) for the Revenue and Shri L.P. Asthana, Advocate for the respondent

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

Final Order No. C/665-666/08

Per P.K. Das:

Revenue filed the appeals against the Order in Original No.70-71/2005 dated 30.8.05 passed by the Commissioner of Customs, Delhi whereby the penal provisions were dropped against the respondents.

2. The relevant facts of the case, in brief, are that one M/s Mahavir Impex , a 100% Export Oriented Unit, was engaged in the fraudulent export of cheap and sub-standard textile goods, namely, rags and chindies in the guise of 100% polyester fancy scarves. Show cause notice was issued proposing to confiscate the seized goods and to impose penalties on the exporters and its proprietor along with the respondents who were Central Excise Officers who examined the goods at the exporter's factory. The Adjudicating authority confiscated the goods and imposed penalties on M/s Mahavir Impex and Shri Jayesh Jain, proprietor of M/s Mahavir Impex. Commissioner of Customs did not impose any penalty on the respondents. Hence, Revenue filed these appeals.

3. Learned DR on behalf of the Revenue reiterates the grounds of appeal. He drew attention of the Bench to the relevant portions of the show cause notice. It has been alleged that the respondent No.1 & 2, Shri G.S. Charpota and Shri Nathu Lal Meena were Superintendent and Inspector of Central Excise respectively, did not examine the goods at the time of stuffing of the goods at factory and gave false examination reports on the related ARE-1s and thus, abetted the exporter in the fraudulent acts and commission. He submits that the goods were found to be chindies and rags and not 100% polyester scarves. So the examination reports of the respondents are false. He further submits that the Commissioner is erroneous in holding that a it is mere negligence in their duties.

4. Learned Advocate on behalf of the respondents drew attention of the Bench the relevant portion of the reply to the show cause notice. He

submits that it is revealed from the ARE-1s that the respondents examined 10% of the goods and the samples were drawn as revealed from the examination reports but no dispute was raised against this particular sample and the packets examined by the respondents.

5. After hearing both sides and on perusal of the records, it is seen from the back side of the ARE-1s that the respondents noted the particular packet numbers which they have verified. It is also noticed that the samples were drawn of the exported goods. There is no material to show that the said packets or samples were other than the declared goods. In the memo. of appeal, the Revenue has not disputed this fact. There is no statements available implicating the respondents in fraudulent activities of the exporter. It is seen that the respondents in their statements stated that they had never noticed any discrepancy in the goods examined by them. Show cause notice proposed penalty under Section 114 of the Customs Act on the respondents. Section 114 of the Act provides penalty for attempt to export goods improperly etc. In the present case, we do not find any material that the respondents rendered any act or omission for exportation of the goods improperly. Therefore, there is no reason to interfere with the order of the Commissioner. Accordingly, the appeals filed by Revenue are rejected. Cross-objections are also disposed of.

(Dictated and pronounced in the open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)