

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/280 /2005

Date 30/01/2008

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

To :
ASHOK JAISSWAR
6/237, HARVEST CO-OP HSG SOCIETY, SHAILENDRA
NAGAR, S.V. ROAD, DAGISAR (E), MUMBAI
400068

ASHOK JAISSWAR

Appellant

C.C.E. MUMBAI

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. C/280/2008 Customs Dated 10-1-08
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

C.C.E. MUMBAI

THE COMMISSIONER OF CENTRAL EXCISE,
(ADJUDICATION), NEW CUSTOM HOUSE, AS
MUMBAI

2. Adv. / Consult

MR.V K AGGARWAL

7 & 8 GROUND FLOOR, L-92/3 MUNIRKA, MAIN MARKET CELL HOUSE, 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. 43, saket, New

7. M/s Centax Publications (P) Ltd., 1512-E, Bhishm Pitamah

8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301

9. R.Venkatraman Constt. 44-B, S.Suncity, Ghaziabad -

10. Nidheshak publications, I.P.Estate, new Delhi


11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh,

12. Co, Law Institution

13. TAX INDIA, B-XI/8183, Vasant Kunj, New Delhi - 110070

14. Office Copy

15. 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. 280 of 2005

[Arising out of the Order-in-Original No. 20/HKM/CC/DRI/
NCH/2004 dated 29/12/2004 passed by The Commissioner of
Customs (Adj.), Mumbai.]

For Approval and signature :

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

Hon'ble Dr. T.V. Sairam, 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? 21
 3. Whether their Lordships wish to see the fair :
copy of the order?
 4. Whether order is to be circulated to the :
Department Authorities?
-

Ashok Jaisswar

Appellant

Versus

CCE, Mumbai

Respondent

Appearance

Shri V.K. Agrawal, Advocate – for the appellant.

Shri B.K. Singh, Authorized Representative (JDR) – for the
Respondent.

CORAM : Hon'ble Shri S.S. Kang, Vice President
Hon'ble Dr. T.V. Sairam, Member (Technical)

DATE OF HEARING : 10/01/2008.

Final Order No. C/8/08 Dated : 10/1/08

Per. S.S. Kang :-

Heard both sides. Appellant filed this appeal against the imposition of penalty of Rs. 10,000/- under Section 114 of Customs Act 1962. Brief facts of the case are that, numerous shipping bills were filed for export of the goods with draw back claims. The draw back claims amounting to Rs. 40,55,368/- in the case of M/s Golden Exports and Rs. 41,28,290/- in the case of M/s Seven Seas Exports and Rs. 45,00,718/- in the case of M/s Sagar Trade Line were sanctioned. During investigation which was found that firm was non-existence that the value goods was mis-declared to claim the higher rate of draw back. The shipping bills were signed by the present appellant. The revenue is of the opinion that the present appellant abated the exporter in the exports of mis-declared goods and liable.

2. The contention of appellant is that there is no evidence on record to show that appellant connived with the exporter to get higher rate of draw back or the appellant received some extra consideration for signing the shipping bills. The appellant's contention is that without this evidence imposition of penalty is not sustainable. The contention is that the appellant is bonafide belief and after verifying the declaration made by exporter signed the shipping bills and the goods were subsequently change by the exporter with the help of custom officers. The appellant relied upon the decision of the Tribunal in the case of **Sushil Malik vs. Commissioner of Customs, New Delhi** reported in **2006 (195) E.L.T. 285 (Tri. – Del.)** to submit that in absence of evidence that appellant advised the exporter to mis-declare the goods penalty under Section 114 of Customs Act is not sustainable. The appellant also relied upon the decision of the Tribunal in his own case, whereby the penalty imposed on the present appellant on the same grounds, was set aside vide final order No. 487-488/06 – SM (BR) dated 17/01/2006.

3. Contention of revenue is that appellant is a CHA (Customs House Agent) and in his statement under Section 108 of the Customs Act, he admitted that the license was let out by him for the Rs. 5,000/- per month. It was also admitted by him in addition to this amount, he also received a Rs. 5,000/- for the signing the shipping bills. The contention is that appellant without taking due care signed the shipping bills which resulted in getting the undue amount of draw back of Rs. 1.20 crores to the non-existent exporters. The contention is that in these circumstances, the penalty is rightly imposed.

4. We find that admitted facts of the case are that appellant is having CHA license. In his statement, he admitted that he is receiving Rs. 5,000/- per month for use of his license by other person. It is also admitted by the appellant he signed the shipping bills and ~~good reverse~~ ^{received} additional amounts. The case relied upon by the appellant the facts are different. In the case of Sushil Malik (Supra) relied upon the facts are different therefore there is not applicable on the facts of present case as the CHA had not advised the exporter to mis-declaration of

goods. In the present case, the CHA signed all the shipping bills in which, the value of goods was mis-declared. In appellant's own case, Tribunal held that in absence of any malafide intention, the penalty is not sustainable. In the present case, we find as per the admission, the appellant has allowed the other person to use CHA license for mere Rs. 5,000/- per month and for signing present shipping bills extra amount was received by him. In these circumstances, the ratio of the above decision is not applicable on the facts of present case. In view of the admission made in the statement by the appellant, we find no merit in the appeal, same is dismissed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(Dr. T.V. Sairam)
Member (Technical)

PK