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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/773 /2007, C/S/2896/07

Date 07/03/2008

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

To :
M/S BHUPINDER SINGH
(PROPRITOR OF M/S B.S. INTERNATIONAL)
C-200A, HARI NAGAR, NEAR CLOCK TOWER,
NEW DELHI – 10064.

M/S BHUPINDER SINGH (PROPRITOR OF M/S B.S. INTERNATIONAL) Appellant

Vs

C.C. (EXPORT) NEW DELHI Respondent

Stay Order No. C/44/08

I am directed to transmit herewith a certified copy of Final order No. **C/35/08** Customs dated 08.02.08 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. (EXPORT) NEW DELHI
   AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
2. Adv. / Consult
   MR.R.K.JAIN & ASSOCIATES
   610, POADMA TOWER-1, RAJENDRA PLACE, N 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 Publictions (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 EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
BENCH – Customs
C/S/2896/07 in C/773/07

Sh. Bhupendra Singh

Appellant
(Rep. by Sh. Bipin Garg, Adv.)

vs

CC, New Delhi

Respondent
(Rep. by Shri R.K.Verma, DR)

Coram : Hon'ble Mr. JUSTICE S.N.JHA, PRESIDENT
Hon'ble Mr. A.K.SRIVASTAVA, MEMBER TECHNICAL

Final | Date of Decision: 8.2.08
Order No. C/135/08

Stay Order No- C/44/08

Per Justice S.N.Jha:

This appeal came up for hearing on the point of waiver of the requirement of pre-deposit. However, after hearing learned Counsel for the appellant and learned Departmental Representative for the Revenue, we are of the view that the appeal itself can be disposed of at this very stage.

2. The appeal is directed against an order by which penalty of Rs. three lakhs has been imposed on the appellant. The case against the appellant is that he alongwith one Sanjeev Sharma and Anil Sharma took illegal benefits in the matter of export of goods to avail drawback in the name of M/S B.S.International. The case of the appellant in short is that he was inducted in the business by ~~Shri~~ Sanjeev Sharma and he has nothing to do in the matter except that the firm was registered as a proprietory firm in his name and he played no role in the conduct of the business.

As we propose to remand the case to the adjudicating authority for fresh adjudication, it is not necessary to consider the case of the parties on merits. It was inter-alia submitted on behalf of the appellant that he had filed reply to the show cause notice on 17.3.03 but in total ignorance of the fact, without even acknowledging filing of the reply, the impugned order was passed by the Commissioner. On perusal of the record it appears that the reply said to have been filed by the appellant was received in the office of the Commissioner Customs Air Cargo Export, New Delhi, on 17.3.03. Apparently, it was not taken into account and the order was passed. We are satisfied that the appellant has suffered prejudice and there has been violation of the principles of natural justice.

3. In the ordinary course we should have simply remanded the case without putting the appellant to terms, but in the peculiar facts and circumstances of the case, we are of the view that it will be only just and proper to saddle the appellant with some liability at this stage which we quantify at Rs.30,000/- out of Rs.3 lakhs he has been asked to pay as penalty. This amount may be deposited within eight weeks. On deposit of the said amount, Commissioner shall fix a date of hearing and after giving an opportunity to the appellant, pass order in accordance with law.

Order dictated in the open Court.

(Justice S.N.Jha)
President

(A.K.Srivastava)
Member Technical

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