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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/20 - 21 /2008 Date 19/03/2008

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

To :
M/S SAINI CONSULTANTS
J-113, SARABHA NAGAR, LUDHIANA

M/S SAINI CONSULTANTS Appellant
Vs
C.C. (PREVENTIVE) AMRITSAR **STAY ORDER NO.C/54-55/08-CUS.** Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/50-51/08-CUS. DATED 28.02.08** 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. (PREVENTIVE) AMRITSAR
   CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
   THE MALL, AMRITSAR 143001.
2. Adv. / Consult MR.SAURABH KAPOOR, ADVOCATE
   11-YADVINDRA COLONY, THE MALL, PATIALA 147001.

⇒ SHRI SUNIL KUMAR SHARMA,
C/O M/S SAINI CONSULTANTS, J-113, SARABHA NAGAR, LUDHIANA

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 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 Stay Application Nos. 115-116 of 2008 in Appeal Nos. 20-21 of 2008

[Arising out of the Order-in-Original No. 10/CUS/2007 dated 17/10/2007 passed by The Commissioner of Customs, Amritsar.]

For Approval and signature :
Hon'ble Shri S.S. Kang, Vice President
Hon'ble Shri M. Veeraiyan, 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? :

MV

3. Whether their Lordships wish to see the fair copy of the order? :

4. Whether order is to be circulated to the Department Authorities? :

1) M/s Saini Consultants]
2) Shri Sunil Kumar Sharma] Appellant

Versus

CCE, Amritsar Respondent

<u>**Appearance**</u>

Shri Sarubh Kapoor, 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 Sh. M. Veeraiyan, Member (Technical)

DATE OF HEARING : 28/02/2008.

Final Order No. C/50-51/08 Dated : 28/2/08
Stay Order No C/54-55/08

Per. S.S. Kang :-

Applicant filed these applications for waiver of pre-deposit of penalty of Rs. 25,000/- each under 112 of Customs Act 1962.

2. In this case, allegation is that appellant is CHA and employee of CHA has not exercised supervision, as may be necessary to ensure the proper conduct of CHA. In this case two cars were imported to India by mis-declaring the year of manufacture and the description by Shri Shamsher Kalra. During pendency of the proceedings Shri Shamsher Kalra went to Settlement Commission and matter was settled there and the Settlement Commission on deposit of duty imposed penalty on Shri Shamsher Kalra.

3. The contention of applicant is that in para '38' of the impugned order, there is specific finding that there is no evidence that present appellant connived and associated with Shri Shamsher Kalra in illegal clearance of cars.

4. In view of these findings, the penalty is not sustainable.

5. Contention of revenue is that being CHA, he has responsible to verify the contents of the description given by the importer in the Bill of entry and the appellant had not performed their obligation in this regard.

6. We find that in the impugned order in para '38' the Commissioner of Customs held that there is no tangible and conclusive evidence against the applicants from where one can draw the inference that they connived and associated with the Shri Shamsher Kalra in the illegal clearance of car under the TRU. In view of the above, we find the penalty imposed on the appellant is not sustainable. Therefore after waiving the pre-deposit of penalties we set aside impugned order and appeals are allowed.

(Dictated and pronounced in open court)

(S.S. Kang)
Vice President

(M. Veeraiyan)
Member (Technical)

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