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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/349 /2005 Date 27/03/2008

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

To :
M/S RAJIV DHAWAN
RAJIV ENTERPRISES A-43,NEW GOBIND PURA
DELHI
110051

M/S RAJIV DHAWAN Appellant
Vs
C.C.E. DELHI IV Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/ 61 / 08-CUSTOMS DT. 26.03.08**

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. DELHI IV
   NEW CGO COMPLEX, NH-IV, FARIDABAD,
   HARYANA 121001.

2. Adv. / Consult MR.YOGESH KUMAR SAXENA
   CHAMBER NO. 804, PATIALA HOUSE COURT,
   NEW DELHI-110001

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

Asst. Registrar
(Customs Appeal Branch)

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IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Custom Appeal No. 349 of 2005 with Custom Misc. No. 647 of 2007
[Arising out of order in original No. 45/RH/ADJ/2004 dated 28.1.2005 passed by the Commissioner, Customs & Central Excise, Faridabad]

Date of Hearing: 14.03.2008
Date of Decision: 26.03.2008

For approval and signature:

Hon'ble Mr. Justice S.N. Jha, President
Hon'ble Mr. 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.	: 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

Mr. Rajiv Dhawan — Appellant
[Rep. by Mr. Rajiv Dhawan, Appellant]

Vs.

CC, Faridabad — Respondent
[Rep. by Mr. Amit Jain, DR]

CORAM: **Hon'ble Mr. Justice S.N. Jha, President**
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final **ORDER** No C/61/08

Per M. Veeraiyan:

This is an appeal by Shri Rajiv Dhawan, proprietor of Rajiv Enterprises against the order of the Commissioner dated 28.1.2005 imposing a penalty of Rs. 3 lacs on him under Section 112(a) of the Customs Act.

2. We heard the appellant in person and also the learned DR. We also perused the records.

3. The relevant facts, in brief, are as follows:-

(a) There were imports of goods declared as secondary zinc ingots by M/s Rajiv Enterprises and on examination it was found that they were primary ingots instead of the declared item namely secondary zinc ingot; the quantity was found to be higher than the declared quantity and the value was higher than the declared value.

(b) Mr. Rajiv Dhawan started M/s Rajiv Enterprises as a proprietary concern in August 2006; he opened bank accounts in various banks including Bank of Punjab, New Delhi; he obtained importer-exporter code (IE code) from DGFT in September 1997.

(c) He came in contact with one Mr. Ramesh Chandra Goyal through his father; he consented to use of his firm for import by Mr. Ramesh Chandra Goyal; to enable the same he signed cheques on both sides, signed several letter heads and printed forms and gave them to Mr. Ramesh Chandra Goyal . For the above arrangement he was to be paid Rs.5,000/- per month by Mr. Ramesh Chandra Goyal .

(d) Mr. R.C. Goyal used the firm for import; operated the bank account by depositing money and using the money for various purposes including for the payment of custom duty.

(e) The imports made in the name of the above firm was found to be mis-declared in variety, quantity, and value. The original authority held the goods as liable for confiscation; enhanced the value for assessment; demanded duty of Rs.5474102/- and appropriated a sum of Rs.32,00,901/- paid during the investigation; imposed a penalty of Rs.5474102/- on Mr. Ramesh Chandra Goyal. He also imposed a penalty of Rs. 3 lacs on the present appellant.

4. The appellant concedes that he consented to use of firm for import by Mr Ramesh Chand Goyal; that he has signed various blank letter heads printed forms and bank cheques and handed over to Mr. Ramesh Chandra Goyal. During investigation, he admitted that he has done all these things for a monetary consideration. Subsequently, he denied that he received any monetary consideration. He has taken a similar stand in the writ petition filed before the Hon'ble High Court of Delhi.

He was not having the documents to defend him. His father was looking after the case. He was not aware as to who was the Advocate engaged by his father to defend his case. He has not got the case papers from his father who has since expired. He submitted that the documents like bill of entries relied by the Commissioner against him were not supplied to him in spite of repeated requests. He also filed applications under RTI Act for getting these documents and failed to get the same. He submits that the Commissioner has passed the order with out the documents being in the custody of the Commissioner.

There was letter said to be signed by him claiming that even Sh. Ramesh Chandra Goyal has not involved in any misdeclaration. He, clarified that such a letter has not been sent by him. He also claimed that a lawyer not authorized by him appeared before the Tribunal and claimed that the violations, if any, have been done only by Shri Rajeev Dhawan and not by Shri Ramesh Chandra Goyal. There is complaint filed against the Advocate in this regard.

5. Learned DR submits that the appellant is clearly abetted the irregular imports which involved misdeclaration of variety, quantity and value and hence liable for penalty under section 112(a) of the Customs Act. Learned DR relied on the decision of Hon'ble High Court of Bombay in the case of Ashok Chhabildas vs Union of India reported as 2005 (187) ELT 295 (Bom.) in support of his contention the landing of name of the firm for illegal imports will also attract penal action.

6.1. We have carefully considered the submissions from both sides. The allegation in the show cause notice and the finding of the original authority were to the effect that the major role related to the fraudulent imports has been played by Shri Ramesh Chandra Goyal; and that the said Sh. Ramesh Chandra Goyal has used Shri Rajiv Dhawan, Proprietor of M/s Rajiv Enterprises for his nefarious activities. Such a finding does not lead to an inference that Sh. Rajiv Dhawan is innocent. He does not dispute that he consented to use of his firm with IE code, his bank accounts for the activities of Shri Ramesh Chandra Goyal. He also admits to having given signed blank bank cheques and printed forms. Shri Ramesh Chandra Goyal is entitled get IE Code himself and import in his own name. Still he has chosen to use the name of M/s Rajeev Enterprises for his imports. Sh R Dhawan readily accepted to the same. Any man of ordinary prudence can understand the intention behind such arrangements can not be honorable. Therefore we are unable to accept that he agreed, to such an arrangement innocently. He submitted during investigation that he has done these things for monetary consideration which he subsequently retracted. We are convinced that the subsequent retraction is an after thought. His submission that because of non production of documents like bills of entries by the department there is principles of natural justice is not tenable in as much as the import using these documents is not being denied. These are documents which are required to be in the custody the firm of which he is the proprietor. His claim of innocence is not acceptable.

6.2 The department placed reliance on the judgement of the hon'ble High Court of Bombay in the case of Ashok Chhabildas vs. Union of India (supra). The relevant portion of the judgment is reproduced below:-

> "Having heard counsel on both sides, we are of the opinion that there is no merit in the contentions raised on behalf of the petitioner. Admittedly, the petitioner had signed the declaration as proprietor of M/s A.V. Impex. In his statement recorded under Section 108 of the Customs Act on 26.8.1991 the petitioner has admitted that since Mr. Vinodkumar Jatia was his personal friend for the past about 20 years, he had signed the printed forms and some letterheads in the name of M/s A.V. Impex in good faith without asking for details from Mr. Vinodkumar Jatia. At the relevant time, the petitioner was about 32 years old and was carrying the business of trading in minerals and chemicals. When the petitioner signed the declaration on the Bill of Entry as a proprietor of M/s A.V. Impex he know fully well that the declaration was with a view to seek clearance of the imported goods as proprietor of M/s A.V. Impex, although he was not actually carrying on the business in the name of M/s A.V. Impex. Thus, the petitioner wanted to assist Mr. Jatia to clear the goods in the name of any entity which was not in existence. Moreover, admittedly the petitioner opened a bank account in the name of M/s A.V. Impex in Punjab & Sind Bank. It may be that the petitioner has not operated the said bank account but the fact that the petitioner agreed to lend his name for opening of a bank

account in the name of M/s A.V. Impex clearly shows that the said account was opened with a view to facilitate clearance of the goods as if M/s A.V. Impex was in existence, when in fact the petitioner was not carrying on business in the name of M/s A.V. Impex. Apart from that, the petitioner has also admittedly signed blank letterheads so as to enable Mr. Vinodkumar Jatia to mislead the customs authorities that M/s A.V. Impex is actually in existence when in fact, it was not. In these circumstances, the conduct of the petitioner who had actively connived with Mr. Vinodkumar Jatia to facilitate clearance of the goods in the name of a non existent entity is highly deplorable. The fact that all the subsequent acts such as addressing letters to the customs authorities and operating bank accounts in the name of M/s A.V. Impex was carried out by Mr. Vinodkumar Jatia, does not absolve the petitioner to pay penalty for the offence committed by him. Acts committed by the petitioner which are on the fact of it are illegal and with a view to mislead the customs department cannot be said to be committed in good faith. The fact that CHA has been absolved of penal charges and the fact that Mr. Vinodkumar Jatia has also been imposed fine of Rs. 7.5 lakhs cannot be a mitigating circumstances to reduce the penalty levied against the petitioner, especially when the petitioner had signed documents in the name of an entity which was not in existence"

7. In the present case also, the role of Shri Rajiv Dhawan is in the nature of abetment in relation to the fraudulent imports rendering the goods liable for confiscation. Penal action is definitely warranted. However, considering the entire facts and circumstances of the case including the extent of evasion involved and in particular the monetary benefit the appellant has received, we reduce the penalty to Rs. 1 lakh from Rs. 3 lakhs.

8. Appeal is allowed partly on the above terms.

(Order pronounced in the open Court on 26/3/08

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]