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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/551 /2005 Date 07/04/2008

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

To :
S D KAPUR, MANAGING DIRECTOR,
M/S FLISTEX MAGNETIC
C-31, SOAMI NAGAR, NEW DELHI – 110017.

S D KAPUR, MANAGING DIRECTOR, M/S FLISTEX MAGNETIC — Appellant

Vs

THE COMMISSIONER OF CUSTOMS (EXPORT), NEW DELHI — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/71/08-CUSTOMS DT.01.04.08 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
   THE COMMISSIONER OF CUSTOMS (EXPORT),
   NEW CUSTOM HOUSE, I.G.I.AIRPORT,
   NEW DELHI – 110037.
2. Adv. / Consult MR. J. P. KAUSHIK, ADV.
   A-14/3, SFS FLATS, SAKET, NEW DELHI-110017
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 AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM,.W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO. I

Custom Appeal No. 551 of 2005
[Arising out of order in Original No. KRB/ACE/06/05 dated 31.03.2005 passed by the Commissioner of Customs (Export), New Delhi]

Date of Hearing/ Decision: 01.04.2008

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. S.D. Kapur, M.D. of
M/s Flistex Magnetics Limited — Appellant

[Rep. by Mr. J.P. Kaushik, Advocate]

Vs.

CC, New Delhi — Respondent

[Rep. by Mr. B.K. Singh, DR]

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

Final **ORDER** No C/71/08

Per M. Veeraiyan

This is an appeal against the order of the Commissioner dated 31.03.2005. The mater is before the Tribunal for the third time.

2. Heard both sides.

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

(a) The appellant is the Managing Director of one M/s Flistex Magnetics Limited a unit which was set up in Noida Export Processing Zone. The said unit imported duty free capital goods raw materials etc. and also procured with out payment of duty goods from indigenous sources. They have availed custom duty benefit of more than Rs. 30 crores and excise duty benefit of about Rs. 82 lacs.

(b) They were required to export video tapes as finished product. They have not been able to make any physical exports and but made deemed exports to the tune of about a crore to one of the units in the export processing zone and to one 100% EOU.

(c) The company was de-bonded under the orders of the Development Commissioner and penal action was also initiated by the Development Commissioner for non fulfillment of export obligations.

(d) The Customs authorities demanded duty on the capital goods and the raw materials which have been imported/ procured without payment of duty and penalties were also imposed on the company and the Directors.

(e) In the third order of adjudication by the Commissioner, the Director Mr. S.D. Kapur has been imposed penalty of Rs. 5 lacs under section 112 of the Customs Act and he has come on appeal before us.

4. Learned Advocate for the appellant has taken us through the three orders of the Commissioner. Commissioner by his first order dated 31.5.2000 imposed a penalty of Rs. 10 lacs; by his second order dated 21.5.2002 he imposed a penalty of Rs. 8 lacs; by the present impugned order dated 31.3.2005 he imposed penalty of Rs. 5 lacs on the appellant. He

submitted that there was no intention to evade duty on the part of the appellant. It was a case business failure. The company has not removed any material clandestinely or used for any purpose other than the intended one.

5. We have carefully considered the submissions from both sides. We are aware that the previous two orders were set-aside with directions for de novo considerations on various issues including the penalty on the appellant. We do not find any material / evidence showing any intention on the part of Mr. S.D. Kapur warranting penalty under section 112 of the Customs Act. We are in agreement with the submissions of the learned Advocate in this regard.

6. In the absence of any omission, commission specifically attributable to Mr. S.D. Kapur which made the goods liable for confiscation, we are unable to sustain the penalty imposed on him.

7. The appeal is allowed with consequential relief.

(Dictated and pronounced in the open Court)

[Justice S.N. Jha]
President

[M. Veeraiyan]
Member (Technical)

[Pant]