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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/410 /2005 Date 24/04/2008

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

To :
COMMISSIONER OF CUSTOMS,
CUSTOMS COMMISSIONERATE, THE MALL,
AMRITSAR
COMMISSIONER OF CUSTOMS, AMRITSAR. Appellant

Vs

M/S. INDEEP IMPEX Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/104/08-CUSTOMS DATED 9.4.08** 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 M/S. INDEEP IMPEX
   HD-44, FOCAL POINT, PHASE-VI, LUDHIANA

2. Adv. / Consult

3. S.D.R.
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7. M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
8. Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. Nidheshak publications, I.P.Estate, new Delhi
11. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12. Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai 60017
13. Taxindiaonline.com Pvt.Ltd, 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, NEW DELHI PRINCIPAL BENCH, COURT NO. I**

**Customs Appeal No. 410 of 2005**

[Arising out of Order-in-Original No. 06/2004 dated 31.3.2004 passed by Commissioner of Customs, Amritsar]

For approval and signature:

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

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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

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Commissioner of Customs
Amritsar — Appellant

Vs.

M/s. Indeep Impex — Respondent

**Appearance**: Mr. A.Jain, DR for the Appellant
None for the Respondent

**CORAM**:

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

Date of decision : 9.4.2008

Final **ORDER NO.** C/104/08

**Per M. Veeraiyan** (for the Bench):

This is an appeal filed by the Department against the order of the Commisioner dated 31.3.04. The notice issued by the registry to the respondent to the address originally given by the respondent has been returned undelivered stating that no such firm was found in the given address. Therefore, we take up the appeal for final disposal.

2. Heard the learned SDR.

3. The respondents firm M/s. Indeep Impex exported items declared as diamonds with the declared value of Rs. 2.3 crores and claimed and received draw back amounting to Rs. 39,21,156/-. Subsequent to the investigation by the Department, it came to light that the goods exported by the respondent were not cleared at the port of destination and ultimately disposed of for a paltry sum of Rs. 60,000/-. No remittance was received from such export. During the course of investigation, the respondent paid a sum of Rs.10,53,000/- by way of return of erroneously taken draw back. The Commissioner held the goods were liable for confiscation but did not order confiscation as the goods had already been exported. He confirmed the demand of draw back of Rs.39,21,156/- and also imposed penalties on various persons involved in the illegal export.

4. The present appeal is limited to the following issues:-

(1) According to the Department, the Commissioner should have confiscated the goods and in the absence of goods should have imposed redemption fine in lieu of confiscation. Fort this purpose, the learned DR relies on the decisions in the case of Mangala Textiles vs. CCE Rajkot, reported in 2001 (130) ELT 705 and in the case of R. Janardhanan vs. CC, Chennai reported in 2002 (149) ELT 1029, which were based on cases relying on the decision of

Hon'ble Supreme Court in the case of Western Components vs. Commissioner reported in 2001 (115) ELT 278.

(2) According to the Department, the Commissioner should have ordered for appropriation of the sum of Rs. 10,53,000/- (which was paid during the course of investigation) towards the demand of draw back erroneously paid to the respondents.

(3) The Commissioner should have also ordered recovery of interest on the erroneously obtained draw back in terms of Section 75 (11) of the Customs Act.

5. Regarding the decision of the Commissioner in not ordering confiscation of the goods, it is noticed that the goods have already been exported. They were not available for seizure and the question of confiscating them may not arise. A close reading of Section 125 indicates that confiscation which amounts to taking over the ownership of the offending goods, is penal in nature. The offer of option for redemption on payment of fine is in the nature of concession. Even when option of redemption is granted on payment of specified fine, the respondents can not be compelled to exercise the option as, in such a situation, it will not be a case of option. The decision of the Hon'ble Supreme Court in the case of Western Components vs. Commissioner (supra) relates to a case where the goods were physically seized and later on provisionally released under a bond. Such decision, in our opinion, may not be applicable to the facts of the case. Further, the other decision of the Tribunal relied upon by the learned DR does not mandate that the redemption fine should be necessarily imposed. Even if it is held that the redemption fine is imposable, in our opinion, the question of imposing redemption fine in this case may not be warranted.

6. We find that a sum of Rs.10,53,000/- stands deposited by the respondents during the course of investigation. The grievances of the Department that there is no specific order of the Commissioner directing adjustment of the said amount towards amount ordered to be recovered may not be entirely correct. Since the amount of Rs. 39,21,156/- is clearly recoverable in pursuance of Commissioner's order and since the said amount of Rs.10,53,000/-is in the custody of Department, we do not find any objection/difficulty in their appropriating the said amount even in the absence of specific order of the Commissioner to this effect.

7. Regarding the absence of order for recovery of interest in terms of Section 75A (2), we notice that the interest is mandatory in terms of said Section and it became automatically payable from the date of expiry of two months from the date of confirmation of the demand. In this case, by its very nature only the date of commencement of liability to interest can be indicated. The interest became payable till the date of payment. Therefore, it is clarified that even in the absence of specific order of the Commissioner, the provisions of Section 75 A(2) will operate and the interest becomes payable.

8. With the above observations, the appeal of Department is disposed of.

(Dictated in the open Court)

( Justice S.N. Jha )
President

( M. Veeraiyan )
Member(Technical)

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