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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/222 /2005,344 /2005 Date 16/07/2008

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

To :
M/S. LADDAN STEELWARE MFG. CO.
A-58/59, SECTOR-8, NOIDA.

M/S. LADDAN STEELWARE MFG. CO. Appellant

Vs

COMMISSIONER OF CUSTOMS, (IMPORT & GENERAL), NEW CUSTOMS HOUSE, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/192-193/08-CUS DATED 03.07.08**

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
   COMMISSIONER OF CUSTOMS, (IMPORT & GENERAL),
   NEW CUSTOMS HOUSE, NEW DELHI
2. Adv. / Consult
   MR.KAMALJEET SINGHM ADV.
   J-144, PATEL NAGAR -I, GHAZIABAD.
   MR. V. LAKSHMIKUMARAN, ADV.
   B-6/10, SAFDERJUNG ENCLAVE, N.D. – 29.
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)

1 SANJAY JAIN
PROP. METAL SALES CORPORATION
751 GROUND FLOOR , KUNDEWALAN STREET,
AJMERE GATE, DELHI.

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL NO. 222 & 344 OF 2005

[Arising out of Order-in-Original No. 3/SN/05 dated 31.1.2005 passed by the Commissioner of Customs (Import & General), New Customs House, New Delhi]

For approval and signature:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, 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 would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether their Lordships wish to see the fair copy of the order?	Yes
4.	Whether order is to be circulated to the Departmental authorities?	No

M/s. Laddan Steelware Mfg. Co.,
Shri Sanjay Jain, Appellants

Vs.

C.C., New Delhi Respondent

Appearance:

Shri Kamaljeet Singh & Shri Ravi Raghavan,
Advocates for the appellants;
Shri B.K. Singh, SDR, Departmental Representative, for the respondent

Coram:

Hon'ble Mr. S.S. Kang, Vice President,
Hon'ble Mr. Rakesh Kumar, Member (Technical)

Date of Hearing: 3rd July, 2008

FINAL ORDER NO. C/192-193/08 **dated** 3/7/08

Per S.S. Kang:

Heard both sides. Appellants filed these appeals against the impugned order passed by the Commissioner of Customs. The Commissioner of Customs passed the following order:-

(i) I order confiscation of 167.025 MT of imported SS coils valued at Rs. 1,67,02,500/- (Rupees One Crore Sixty Seven Lakhs Two Thousand Five Hundred) under section 111(o) of the Customs Act. However, the said goods are not available for confiscation.

(ii) I order confiscation of 16161 pcs. Of various items of utensils as detailed in para 35 as above under Section 111(o) of the Customs Act 1962 claimed to have been manufactured in contravention of the advance licenses scheme. However, I allow them to redeem the goods on payment of Rs. 25,000/- (Rs. Twenty five thousand) under Section 125 of the Customs Act.

(iii) I confirm demand of Rs. 60,20,250/- on the quantity of 167.025 MT of SS Coils diverted in violation of provisions of

Customs notification No. 48/99 dt. 29.4.99 read with Exim Policy 1997-2002 under proviso to Section 28(1) of the Customs Act. The said amount has already been deposited by M/s. LSMC and accordingly I order for appropriation of the amount into Government account.

(iv) I confirm duty amounting to Rs. 1,68,750/- (Rs. One lakh sixty eight thousand seven hundred fifty) involved in the SS Coils weighing 3.32 MT fraudulently shown to have been used in the manufacture of SS Utensils as on para 2 above under proviso to Section 28(1) of the Customs Act. The said amount has been deposited by M/s. LSMC and accordingly I appropriate the same towards Government account.

(v) I order for levy of interst on the said amount of Rs. 61,89,000/- (Rs. Sixty One Lakh Eighty Nine Thousand) at the rate of 24% from the date of import of 170.350 MT till the date the said amount was paid by them as per the details of the Challans mentioned in the notice. The interest calculated accordingly come to Rs. 3,06,964/- which shall be paid immediately.

(vi) I impose mandatory penalty of Rs. 64,95,964/- (Rs. Sixty Four Lakh Ninety Five Thousand Nine Hundred Sixty Four) under Section 114(A) of the Customs Act (equal to duty and interest) on M/s. LSMC, Noida.

(vii) I impose penalty of Rs. 50,00,000/- on Shri Sanjay Jain of M/s. Metal Sales Corporation under Section 112(b) of the Customs Act."

2. Learned Counsel appearing on behalf of M/s. Laddan Steelware Mfg. Co. submitted that they were having advance license to import stainless steel coil with an obligation to use the same in the manufacture of stainless steel utensils and to export the same. The appellants purchased S.S. coil from M/s. Metal Sales Corporation on high sea sales basis and due to shortage of space, the same was stored in the premises of M/s. Goel Tin & General Industries. Contention is that whatever raw material is required for manufacture of goods the same is taken from the store of M/s. Goel Tin & General Industreis, therefore, it cannot be said that the imported raw material has been diverted and not used in the manufacture of specified goods.

3. Learned Counsel appearing on behalf of the Shri Sanjay Jain, partner of Metal Sales Corporation, submitted that they are regular importer of s.s. coils and sold some consignments to Laddan Steelware Mfg. Co. on high sea basis. On the request of Laddan Steelware Mfg. Co., the goods were cleared from Customs on their behalf and were sent to Goel Tin & General Industries as per instruction of Laddan Steelware Mfg. Co. Contention is that there is no evidence on record to show that the present applicants connived with M/s. Laddan Steelware Mfg.Co. in diversion of the imported goods. Contention is that the adjudicating

authority relied upon the statement of employees of Laddan Steelware and Goel Tin & General Industries to say that there is no connection between Laddan Steelware Mfg. Co. and Goel Tin & General Industries. Contention is that documentary evidence which are on record, prove that Goel Gin & General Industries are job workers of M/s. Laddan Steelware Mfg. Co., and therefore, penalty on the present appellants is not sustainable.

4. Contention of Revenue is that Laddan Steelware Mfg. Co. is importing S.S. coil without payment of duty on the basis of advance license. Condition of license was that the imported duty free raw material is to be used in the manufacture of stainless steel utensils and the same were to be exported. Samples were drawn from s.s. utensils which were found in the factory premises and report of CRCL shows that the said s.s. utensils were not made out of imported raw material. As the appellants made import of raw material without payment of duty on the condition that same will be used for specified use, therefore, onus is on the appellants to show that the same is used in the manufacture of specified goods as per terms and conditions of advance license. The appellants failed to show that the imported raw material is used in the manufacture of specified goods, therefore, impugned order demanding duty and imposing penalty is rightly passed. In respect of penalty imposed on Shri Sanjay Jain contention of the Revenue is that the goods were imported by M/s. Metal Sales Corporation which were sold on

high sea basis but subsequently and sent to one M/s. Goel Tin & General Industries who is job workers of Laddan Steelware Mfg. Co. As per condition of advance license, as there is no endorsement on advance license as supporting manufacturer the goods cannot be diverted to Goel Tin & General Industries. Revenue also submitted that as per statement of authorized person of Goel Tin & General Industries imported s.s. coil/sheets found in the premises of Goel Tin & General Industries is of Metal Sales Corporation. Therefore, penalty is rightly imposed.

5. We find that Laddan Steelware Mfg. Co. made import of s.s. coils under advance license without payment of duty. As per condition of advance license goods manufactured out of imported raw material were to be exported. Samples of s.s. utensils were examined by CRCC and it was found that the same were not made out of imported raw material. As the appellants made import of raw material without payment of duty and the condition of the advance license to manufacture specified goods and to export the same and the appellant failed to comply with the condition of import, hence, we find no infirmity in the impugned order whereby demand is confirmed and equal amount of penalty is imposed on M/s. Laddan Steelware Mfg. Co.

6. In respect of appeal filed by Shri Sanjay Jain, partner of Metal Sales Corporation we find that the goods in question are imported by Metal Sales Corporation and were sold on high sea sales basis to other

appellants. As per evidence on record Metal Sales Metal Sales Corporation who cleared the goods from Customs and stored at the premises of Goel Tin & General Industries on the instruction of other appellants M/s. Laddan Steelware Mfg. Co. There is no evidence on record to show that Shri Sanjay Jain diverted the goods or helped the other appellants in diversion of the duty free raw material. In these circumstances penalty imposed on Shri Sanjay Jain is not sustainable, hence, set aside. The appeal filed by M/s. Laddan Steelware Mfg. Co. is dismissed and appeal filed by Shri Sanjay Jain is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 4th July, 2008
RK