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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/881 /2005 Date 04/08/2008

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

To :
A.S.KOTWAL
HOUSE NO.16, SECTOR-4, URBAN ESTATE,
GURGAON, HARYANA
A.S.KOTWAL Appellant

Vs

COMMISSIONER OF CUSTOMS, ICD, TKD, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/268/08** dated 22.7.08

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, ICD, TKD, NEW DELHI
   ICD, TKD, NEW DELHI
2. Adv. / Consult A.S. Samad 55,Masjid Lane, Jungpura, Bhogal, N. Delhi
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
16. Easy Service Tax on line Dot Com (P) Ltd
    407A Iscon mall, above Star India Bazar
    Satellite Road,
    Ahmedabad - 15

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – II

CUSTOMS APPEAL NO. 881 OF 2005

[Arising out of Order-in-Original No. 52/05 dated 29.6.2005 passed by the Commissioner of Customs, ICD, Tuglakabad, 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?	
2.	Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities?	

Shri A.S. Kotwal — Appellants

Vs.

C.C., New Delhi — Respondent

Appearance:

Shri P.C. Jain, Advocate for the appellants;
Shri A.K. Madan, Departmental Representative, for the Revenue

Coram:

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

Date of Hearing: 22nd July, 2008

FINAL ORDER NO. C/268/08 dated ________

Per S.S. Kang:

Heard both sides.

2. Appellants filed this appeal for waiver of penalty of Rs. 10,000/- imposed under Section 20 of Customs Act. The appellants is a bank manager of Oriental Bank of Commerce, New Delhi. Penalty was imposed on the ground that he has not taken due caution before opening current account in the name of Shri A.K. Singh, proprietor and M/s. Vikas Exports, New Delhi. M/s. Vikas Exports exported certain goods which were found to be over valued to avail higher draw back.

3. Contention of the appellants is that while he was working as Manager of Oriental Bank of Commerce the applicant opened current account in the name of Shri A.K. Singh on the introduction of one current account holder and subsequently another bank current account was opened in the name of Vikas Exports as Shri A.K. Singh was holding current account in the same branch. There is no allegation that the applicant is benefited by draw back claimed by Vikas Exports. The only finding in the adjudication order against the appellant is that the appellant has not explained satisfactorily, how the current account in the name of Vikas Export was opened as Shri A.K. Singh also had current

account. The contention is that as Shri A.K.Singh has personal account and another account was opened in the name of M/s. Vikas Export.

4. The contention of the Revenue is that he is responsible to ascertain credential of person who is opening the account. In the present case M/s. Vikas Exports exported goods by mis-declaring value of the goods and availed higher draw back which were deposited in the bank account of Vikas Exports. Whereabouts of Shri A.K. Singh, proprietor are not available during the investigation. In these circumstances penalty was rightly imposed.

5. We find that the appellant is bank manager and there is nothing on record to show that he has connived with the exporter or is benefited by draw back claimed by Vikas Exports. Bank account was opened after due verification and on introduction by other account holder. In these circumstances we find the penalty imposed is not sustainable hence set aside. The appeal is allowed.

(Dictated & pronounced in the Open Court.)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUMAR)
MEMBER (TECHNICAL)

Dated 25th July, 2008
RK