TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

**REGISTERED / AD**
**Email : delhi@cestat.gov.in**

**CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066**
**CUSTOMS APPEAL BRANCH**

Appeal No. C/161 /2007-162 /2007,244 /2007,568 /2007 Date 05/08/2008

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

To :
RAJNEESH BEDI- PROP, M/S CYTAG EXPORTS
HOUSE NO 3140, GURDEV NAGAR, LUDHIANA
RAJNEESH BEDI- PROP, M/S CYTAG EXPORTS

Appellant

Vs

C.C.E. AMRITSAR

Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/276-279 2008 Customs dated 24.7.08 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
   C.C.E. AMRITSAR
   CUSTOM HOUSE, C.R. BUILDING, THE MALL, AMRITSAR
2. Adv. / Consult
   MR.SUDHIR MALHOTRA.
   13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR
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)

16. RAJESH KUMAR @ AMIT KUMAR
HOUSE NO 195A, MODEL GRAM, LUDHIANA
17. M/S CYTAG EXPORTS,
SUA ROAD. DHANDARI KALAN, LUDHIANA.
18. M/S MAERSK INDIA PVT. LTD.-SAFMARINE DIVISION
(EARLIER KNOWN AS SAFMARINE INDIA (P) LTD. ) 2ND FLOOR, GOMTI HOUSE, 1, THE MALL NEAR FOUNTAIN CHOWK
19. Easy Service Tax online Dot Com (P) Ltd
407A Iscon mall, above Star India Bazar, Satellite Road, Ahmedabad -15

IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

## Custom Appeal No. 161-162 of 2007

(Arising out of common Order-in-Appeal No. 65-68/Cus/Appl/Ldh/06 dated 12.12.2006 passed by the Commissioner of Central Excise (Appeals), Jalandhar)

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 Rajneesh Bedi
Shri Rajesh Kumar — Appellant

Vs.

CC, Amritsar — Respondent

## Custom Appeal No. 244 of 2007

CC (Prev.), Amritsar — Appellant

Vs.

M/s Cytag Exports — Respondent

## Custom Appeal No.568 of 2007

Maersk India Pvt. Ltd. — Appellant

Vs.

CC, Amritsar — Respondent

Appearance:
Shri Sudhir Malhotra, Advocate - For appellant
Shri R.K. VERMA, DR - For respondent

CORAM:
HON'BLE MR. S.S. KANG, VICE PRESIDENT
HON'BLE MR. RAKESH KUMAR, MEMBER (TECHNICAL)

Date of Hearing: 24.7.2008

Final Order No. C/276 to 279/08 dated 24/7/08

***Per S.S. Kang:***

Common issue is involved, therefore the appeals are being taken up together.

2. The brief facts of the case are that M/s Cytag Exports filed a shipping bill for export of bicycle nylon tyre and tubes and also made claim under DEPB Scheme. The exporter declared value at US $ 52930. The goods were exported and thereafter invoice was recovered and investigation was conducted and during investigation parallel set of invoices were recovered showing the value of exported goods only US $ 13200. A show-cause notice was issued to the appellant for confiscation of goods on the ground of mis-declaration and for denial of DEPB benefit and for imposition of penalties. The adjudicating authority confiscated the goods and allowed the same on redemption fine of Rs. Two lakhs and penalty was

imposed on Shri Rajneesh Bedi, Proprietor of exporting firm and Shri Rajesh Kumar, authorised signatory and a penalty of Rs. One lakhs was imposed on shipping line.

3. The Commissioner (Appeals) modified the adjudication order to the extent of setting aside redemption fine.

4. The appellants filed appeals against the impugned order and Revenue also filed appeal against same impugned order whereby redemption fine is set aside.

5. The contention of the appellant is that the goods were exported and after due examination the value was accepted at the time of export. It is only at the instance of their foreign buyer, the appellant prepared another set of invoices to be supplied to their customer so that he can save Customs duty at their end, therefore, the goods were not liable for confiscation as the correct value was declared. There is other evidence on record to show the appellant overvalued goods to get higher DEPB benefits.

6. The contention is also that the DEPB benefit was surrendered prior to issuance of show-cause notice.

7. The contention of the Revenue is that the documents recovered from the appellant shows that inflated value was declared in the export document to get higher DEPB benefit. It is also submitted that Shri Rajneesh Bedi, authorised signatory manipulated the documents even to the extent of producing forged bank realisation certificate for obtaining DEPB scrips. The Revenue also submitted the goods in question are liable for confiscation, therefore, redemption fine is imposable. The Revenue relied upon the decision of Hon'ble Madras High Court in the case of **Dadha Pharma Pvt. Ltd. Vs. Secretary to Govt. of India** reported in 2000 (126) ELT 535.

8. We find that in this case goods were over-valued to get higher DEPB benefits. The documents recovered from the premises of the exporter shows that inflated value was mentioned in the export document whereas the invoices which were sent to their customers in respect of goods in question showing much less value. In these

circumstances, we find no infirmity in the impugned order whereby it has been held that the goods are mis-declared in respect of the value of goods. We find that Hon'ble High Court in the case of **Dadha Pharam Pvt. Ltd.** (supra) held that fine is imposable in case the goods were held to be liable for confiscation. In view of the above decision, we find that finding of the Commissioner (Appeals) in this regard is not sustainable hence set aside. Keeping in view the facts and circumstances of the case, we find that redemption fine of Rs. One lakh will meet the ends of justice.

9. In respect of personal penalties, we find that the goods were mis-declared in respect of value to get higher DEPB benefit and Shri Rajesh Kumar even produced forged documents, therefore, we find no infirmity in the order whereby the penalties are imposed on Shri Rajneesh Bedi and Shri Rajesh Kumar.

10. In respect of appeal filed by M/s Safmarine India Pvt. Ltd. we find they are shipping line and the details mentioned in the documents as produced by the exporter

were reflected in the bill of lading. There is no evidence on record to show that this appellant connived with the exporter to get higher DEPB benefits. In absence of this finding, we find that penalty imposed on appellant M/s Safmarine India is not sustainable and hence set aside. The appeals are disposed of as indicated above.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

(RAKESH KUAMR)
MEMBER (TECHNICAL)

RM