

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

Appeal No. C/378-381/2007-SM[BR]

Date 09/01/2008

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR

Appellant
Vs
Respondent

M/S ANAND PLATE YARD

I am directed to transmit herewith a certified copy of Final order No.28-31/2008-SM[BR] dated 30.11.2007 passed by the Tribunal under Section 129, (B) of the Customs Act, 1962 & Financial Act 1994 relating to Service Tax


Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent

M/S ANAND PLATE YARD

2, MANOJ ENTERPRISES MAJI MANDI AMRITSAR

G.T. ROAD, MANDI GOBINDGARH

3, AMAN ALLOYS G.T. ROAD MANDI GOBINDGARH

4, M/S PEEJAY INTERNATIONAL LTD INDUS AREA LUDHIANA

2. Adv. / Consult SHRI, ATUL GUPTA CO. SECTY.

B-1/1289-A, VASANT KUNJ NEW DELHI-70

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 Publications (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
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
 TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH
 NEW DELHI, COURT NO. III

Customs **Excise** Appeal No. 378-81 of 2007-SM (BR)
 [Arising out of Order-in-Appeal No.33-36/Cus/Apl/Ldh/07 dated
 6.3.2007 passed by the Commissioner (Appeals) Customs, Chandigarh].

Date of Hearing/decision: 30.11.2007

For approval and signature:
 Hon'ble Mr. P.K. Das, Member (Judicial)

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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. | : | |
| 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? | : | |
| 4. Whether Order is to be circulated to the Departmental authorities? | : | |
-

CC, Amritsar Appellant
 Mr. A.K. Rastogi, Authorised Departmental Representative (DR) for the Department.

Vs.

M/s. Anand Plateyard & Ors. Respondent
 Mr. Atul Gupta, Co. Secretary for the respondent.

CORAM: Mr. P.K. Das, Member (Judicial)

Final ORDER No. 28-31 / 08 SM (BR)

Per P.K. Das:

The Revenue filed these appeals against the Order-in-Appeal No.33-36/Cus/Apl/Ldh/07 dated 6.3.2007 passed by the Commissioner of Central Excise (Appeals), Chandigarh.

2. The relevant facts of the case, in brief, are that the respondent purchased freely transferable DEPB Scripts from the open market. Thereafter, it is found that the said scripts were procured in a fraudulent manner by the licence holder. The adjudicating authority confirmed the

demand of duty along with interest. The adjudicating authority observed that the goods are liable to confiscation, under Section 111 (O) of the Customs Act, 1962 but since the goods are not available, no order of confiscation can be passed. He has not imposed penalty on the respondent, but imposed personal penalty upon the other noticees, who procured the forged licence. The Revenue filed appeals before the Commissioner (Appeals) against the respondent for imposition of redemption fine. The Commissioner (Appeals) rejected the appeal filed by the Revenue.

3. Ld. DR on behalf of the Revenue submits that the respondent obtained the forged DEPB Scripts, which were not within the knowledge of the department and, therefore, there is no reason to execute any Bond or any undertaking. He submits that in this situation when the goods are confiscated under the Act, redemption fine must be followed. He relied upon the decision of the Tribunal in the case of R. Janardhanan Vs. Commissioner of Customs, Chennai reported in 2002 (149) ELT 1029 (Tribunal-Chennai). Ld. Counsel on behalf of the respondent reiterates the findings of the Commissioner (Appeals). He submits that that the Hon'ble Supreme Court and the Tribunal in a series of decisions held that the redemption fine is imposable in the case of execution of bond and undertaking. He further submits that the adjudicating authority observed that the appellant purchased the DEPB Scripts in a bona fide manner.

4. After hearing both the sides and on perusal of the records, I find that the adjudicating authority observed that there is nothing on record to infer that the respondent purchased the freely transferable DEPB Scripts otherwise than in a bona fide manner and there is nothing to suggest they colluded with the other noticees, who obtained the DEPB Scripts by fraudulent means. Accordingly, penal proceedings under Section 112/114

A of the Act were dropped. There is no dispute that the goods were released un-conditionally. There is no material that the appellant procured these DEPB Scripts in a mala fide manner and, therefore, the submission of the Id. DR that the Revenue had no knowledge that the respondent procured the forged DEPB Scripts have no force as the respondents themselves had no knowledge of the same. The Commissioner (Appeals) passed the order following the decision of the Hon'ble Supreme Court and the relevant portion is reproduced below:-

"I find that the Apex Court in the case of M/s. Weston Components Ltd. Vs. Commissioner of Customs, New Delhi reported in 2000 (115) ELT 278 (SC) has held that "Redemption fine imposable even after release of goods on execution of bond. Mere fact that the goods were released on the bond would not taken away the power of the Customs Authorities to levy redemption fine if subsequent to release of goods import was found not valid or that there was any other irregularity which would entitle the Customs authorities to confiscate the said goods". The facts in these two case are different, as in the instant cases the goods were cleared for home consumption unconditionally, hence, the case cited by the appellants are not relevant. I hold merits in the above view of the adjudicating authority in light of Apex Court's decision that when the goods are not available for confiscation nor have been cleared for home consumption or any undertaking/bond, then the goods cannot be confiscated and hence, no redemption fine can be imposed on the goods in lieu of confiscation. On the other hand, the case laws referred by the appellants further endorsed the views of adjudicating authority in the light of Apex Court above said judgement that neither the goods were available for confiscation nor cleared on undertaking/bond, they were not redeemable and hence, redemption fine cannot be imposed."

6. In view of the above, I do not find any reason to interfere the impugned orders. Accordingly, the appeals filed by the Revenue are rejected.

Order dictated & pronounced in open court on 30.11.2007.

(P.K. Das)
Member (Judicial)

Ckp.