

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/640 /2007&641/2007-SM[BR]

Date 16/01/2008

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

To :
M/S KAMDAR TRADING CO.
LLC., P.O. BOX NO. 42809, DUBAI, U.A.E.

[2]M/S ARDEE TRADING COMPANY LLC,
P.O. BOX NO.42809 DUBAI, U.A.E.

M/S KAMDAR TRADING CO.

Appellant

Vs

Respondent

C.C. (ICD) NEW DELHI

I am directed to transmit herewith a certified copy of Final order No. 97-98/2008-SM[BR] dated 29.11.2007 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

C.C. (ICD) NEW DELHI

ICD, TUGHLAKABAD, NEW DELHI 110020.

2. Adv. / Consult

MR.PIYUSH KUMAR,ADV

B-25,LAJPAT NAGAR-III,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. 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)

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**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

COURT NO.III.

Customs

Appeal No. E/640 & 641 of 2007-SM (BR)

(Arising out of the Order-in-appeal No 36/2007 dated 8.8.2007 passed by the
Commissioner (Appeals), Customs, New Delhi).

For approval and signature:

Hon'ble Mr. P.K. Das, Member(Judicial)

-
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? :
 3. Whether their Lordships wish to see the fair copy of the Order? :
 4. Whether Order is to be circulated to the Departmental authorities? :
-

Yes

M/s. Kamdar Trading Co.

Appellant.

Versus

CC (ICD), New Delhi

Respondents

Appearance

Shri K.K. Anand, Advocate for the appellants.

Shri Sumit Kumar, Authorised Departmental Representative (DR) for the respondent.

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

Date of decision:29.11.2007.

Final Order No. 97-98/08-SM(BR)

Per P.K. Das:

Common issue is involved in these appeals and, therefore, both the appeals are taken up together for disposal. The appellants filed these appeals against confiscation and penalty.

2. The Id. Advocate on behalf of the appellants submits that no Bills of Entry was filed for the imported goods. There is no dispute that the imported goods were accompanied with the commercial invoices. There is only difference of weight of

the consignment as declared in the Bill of Lading. The goods were confiscated, which is not permissible under the law, as no Bill of Entry was filed. He relied upon the decisions of the Hon'ble Supreme Court and the Tribunal as under:-

- (1) U.O.I. Vs. Sampat Raj Dugar 1992 (58) ELT 163
- (2) Pacific International Traders Vs. U.O.I. 2002 (142) ELT 544 (Bombay)
- (3) J.P. Electronics P.T.E. Ltd. Vs. U.O.I 2001 (133) ELT 32 (Bombay)
- (4) Kabul Textile Vs. CCE, Goa 2004 (1740 ELT 470 (T)

3. Ld. DR reiterated the findings of the Commissioner of Customs. He submits that there is a difference as evident of Bill of Lading and actual weighment. Therefore, goods are confiscable and imposition of penalty is justified.

4. After hearing both the sides and on perusal of the records, I find that the commercial invoices of the imported goods indicate the quantity in "meter". The adjudicating authority observed that the imported goods are polyester fabrics as per declaration in the invoice. Thus, the imported goods tallied with the declaration of the commercial invoice. I find that the appellants have not filed the Bills of Entries. The Tribunal in the case of Kabul Textiles (supra) held that alteration of description of the goods in the Invoice/Bill of Lading/import manifest, even if done with mala fide intention to reclassify the goods under tariff entry attracting lesser duty, would not amount to mis-declaration especially where no Bill of Entry had been filed. The said decision of the Tribunal was upheld by the Hon'ble Bombay High Court in the case of Commissioner of Customs & Excise, Goa Vs. Kabul Textiles (LLC) as reported in 2006 (206) ELT 1173 (Bombay). In the case of Pacific International Traders (supra), the Hon'ble Bombay High Court observed that the goods abandoned by importers, no Bill of Entry having been filed by them nor import documents produced by them, the Department is not justified in detaining the goods abandoned by the consignee. The goods are allowed to be re-exported by the supplier.

5. In the present case, I find that there is no allegation of malafide on the part of the appellants. The appellants also did not file Bill of Entry for the purpose of clearance of the goods. It is also seen that the Commissioner of Central Excise allowed re-export of the goods subject to payment of redemption fine. Respectfully following the decision of the Tribunal in the case of Kabul Textile (supra), confiscation of the goods are set aside and, therefore, there is no reason to impose penalty under Section 112 of the Customs Act, 1962. However, there is a contravention of the provisions of the Customs Act, and, therefore, penalty is imposable under Section 117 of the Customs Act, which provides the penalty not exceeding Rs.10,000/-. Accordingly, confiscation and imposition of redemption fine are set aside and the penalty is reduced to Rs.10,000/- (Rupees Ten Thousand only) in both the appeals. The appeals are allowed in the above terms.

[Dictated and pronounced in the open Court].

(P.K. DAS)
Member (Judicial)

Ckp