

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

Date 23/01/2008

Appeal No. C/688 /2007

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

To :
ITC LTD
MR KAPIL KHER, AUTHORISED REPRESENTATIVE
OF ITC LTD, F-256, NEW RAJINDER NAGAR, N
DELHI.
110060

ITC LTD

C.C. NEW DELHI (IMPORT & GENERAL)

Appellant
Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No. 104/2008-SM[BR] dated 3.1.2008
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. NEW DELHI (IMPORT & GENERAL)

NEW CUSTOM HOUSE, NEAR I.G.I. AIRPORT, NEW
DELHI 110037.

2. Adv. / Consult SHRI, KAPIL KHER ADV.

F-256, NEW RAJINDER NAGAR NEW DELHI-110060

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 & SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Custom Appeal No. 688 of 2007-SM(BR)

(Arising out of Order-in-Appeal No. CC(A)/CUS/137/EXP/D-I/07 dated 17.9.07
passed by the Commissioner of Customs (Appeals), New Delhi)

For approval and signature

HON'BLE MR. S.S. KANG, VICE PRESIDENT

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?	N ^o
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

ITC Ltd.

Appellant

Vs.

CC, New Delhi

Respondent

Appearance:

Shri Kapil Kher, Advocate

- For appellant

Shri S.L. Meena, SDR

- For respondent

CORAM:

HON'BLE MR. S.S. KANG, VICE PRESIDENT

Date of Hearing: 3.1.2008

Final Order No. 104/08-SM(BR) dated 3.1.08

Per S.S. Kang:

Heard both sides.

2. The appellant filed this appeal whereby impugned goods were confiscated on the ground of mis-declaration

and redemption fine of Rs.50,000/- and penalty of Rs.13,000/- was imposed.

3. The brief facts of the case are that the appellant filed Bill of Entry dated 21.4.07 in respect of the goods covered under the invoice No. 16103 dated 16.4.07 and declared the goods as 2400 pcs. of body lotion, 3750 pcs. of instant conditioner, 4050 pcs. of hair wash. The declared value of the goods was US \$ 5773.20 and freight was declared 507 GBP. During examination, it was found that the consignment in question consisted of two packages of total quantity of 12450 pcs instead of 10200 pcs. as declared in the Bill of Entry and total freight paid by the appellant was GBP 1365.05 instead of GBP 507 declared in the Bill of Entry. The adjudicating authority confiscated the goods under Section 111m of the Customs Act 1962 read with Section 118 of the Act and allowed to release the goods on payment of redemption fine of Rs. One lakh and penalty of Rs.25,000/- was imposed under Section 112 of the Customs Act. On appeal, the Commissioner (Appeals) upheld the

confiscation of the goods, however, reduced the redemption fine of Rs.50,000/- and penalty to Rs.13,000/-.

4. The contention of the appellant is that when the mistake was realized the appellant vide letter dated 11.5.07 informed the custom authorities that due to oversight from our supplier the other invoice No. 162344 dated 16.4.07 was not supplied hence the goods covered under which invoice was not declared in the Bill of Entry and on receipt of the invoice made a request to amend the Bill of Entry. The contention is that there is no mens rea on their part to evade payment of duty, therefore, goods are not liable for confiscation and appellants are not liable for penalty. The appellant relied upon the decision of the Tribunal in the case of **Crompton Greaves Ltd. Vs. CC** reported in 1999 (111) ELT 869 to submit that when there is no mens rea on the part of the importer to evade payment of duty the importer is not liable for penalty. The appellant relied upon the decision of Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. Vs. State of Orissa** reported in AIR 1970 SC 253 which was followed by Hon'ble Supreme Court in the case of **Akbar**

Badrudin Jiwani of Bombay Vs. CC reported in AIR 1990 SC 1579. The contention is that when there is no mens rea on the part of the assessee to evade payment of duty, therefore, imposition of penalty is not sustainable.

5. The Revenue submitted that the appellant had misdeclared the quantity of goods, value of goods and in respect of freight paid by them and the appellant admitted mistake when it was pointed out by the Revenue. The contention is that mens rea is not required for imposition of penalty under the Customs Act 1962. The Revenue relied upon the decision of Hon'ble Madras High Court in the case of **CC Vs. Bansal Industries** reported in 2007 (207) ELT 346. The contention is that in this case the Tribunal set aside the confiscation of the goods which were supplied by the exporter by mistake. On appeal filed by the Revenue, Hon'ble Madras High Court set aside the order passed by the Tribunal.

6. In this case, there is no dispute that full quantity of goods were not declared in Bill of Entry. The contention is that due to mistake the same could not be declared in the Bill

of Entry. The appellant mis-declared the quantity of goods, value of goods as well as freight paid by them. The appellant relied upon the decision of Hon'ble Supreme Court in the case of **Hindustan Steel Ltd. (supra)** which was followed in the case of **Akbar Badrudin (supra)**. In the case of **Hindustan Steel (supra)**, the dispute was regarding whether the supply of construction material amounts to sale under the sales tax. In the case of **Akbar Badrudin (supra)**, the issue before the Hon'ble Supreme Court was in respect of the classification of imported goods. There is no issue before the Hon'ble Court regarding mis-declaration of the goods, hence the ratio of above decisions are applicable on the facts of present case. In the case of **Bansal Industries (supra)**, the Hon'ble Madras High Court after relying upon the decision of Hon'ble Supreme Court held that in the case mis-declaration or undervaluation of goods element of mens rea not required for imposition of punishment under Customs Act 1962. In this case, the Tribunal accepted the contention of the importer and set aside the confiscation on the ground that impugned goods were supplied by mistake by the supplier as the impugned goods were not ordered by the importer and there is no evidence that importer has paid for the impugned goods. In these circumstances, the Tribunal held that there was no willful, suppression of facts and the allegation that importer mis-

declared the goods with intention to evade payment of duty.

This finding was set aside by the Hon'ble High Court. The

Hon'ble High Court held as under :-

“We have gone through the order of the Tribunal. It is true that the Tribunal has recorded a finding of fact that it is inclined to accept the reasons given by the assessee that it was the supplier who by mistake loaded tin sheets waste which were not ordered by the assessee and that the Revenue has not shown that there was any flow back of funds for the purpose of tin sheets waste. However, a perusal of the order impugned shows that the Tribunal proceeded on the basis that the assessee had no intention to evade duty. We are deliberately quoting the order of the Tribunal in the following words :

“.....the Revenue has not shown that appellant had willfully suppressed the facts and had mis-declared the goods with intention to evade duty and the fact that he had consciously committed the act of misdeclaration.....”

It is off-repeatedly held that mens rea is not an essential ingredient for contravention of the provisions of a civil law. The Apex Court recently in **Chairman, SEBI v. Shriram Mutual Fund** {(2006) 5 SCC 361} held as under :-

“Mens rea is not an essential ingredient for contravention of the provisions of a civil Act. Unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether such a violation was intentional or not. The breach of a civil obligation which attracts a penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact

whether the contravention was made by the defaulter with any guilty intention or not.”

Applying the above ratio to the facts of the case, we find that though the Tribunal has recorded a finding of fact that it was the supplier who by mistake loaded tin sheets waste which were not ordered by the assessee, the Tribunal rendered its decision on the basis that the Revenue has not shown that the assessee had willfully suppressed the facts and had misdeclared the goods with intention to evade duty. The order of the Tribunal mainly proceeded on the footing of intention of the assessee to evade duty, which, in our view, is not correct in the matter of breach of a civil obligation attracting levy of penalty. Therefore, the order of the Tribunal is liable to be set aside.

Accordingly, the question as reframed by us is answered in the negative and against the assessee. The appeal is allowed and the order of the Tribunal is set aside and the matter is remitted back to the Tribunal for fresh disposal on merits and in accordance with law. No costs. Connected CMP is closed.”.

7. I find that the ratio of the above decision of the Hon'ble Madras High Court is fully applicable on the facts of the present case. Therefore, I find no merit in the present appeal, the same is rejected.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM