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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/401 /2007

Date 06/02/2008

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

To :
R.K. SRIVASTAVA
150, MAITRI APARTMENTS, 28 I.P. EXTENSION,
DELHI
110092

R.K. SRIVASTAVA

Appellant

C.C. (ICD) NEW DELHI

Vs
Respondent

I am directed to transmit herewith a certified copy of Final order No.265 /2008 -SM[BR] dated 15.1.2008 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. (ICD) NEW DELHI

ICD, TUGHLAKABAD, NEW DELHI 110020.

2. Adv. / Consult shri. BIPIN GARG ADV.

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

Custom Appeal No. 401 of 2007-SM(BR)

(Arising out of Order-in-Original No. 4/2007 dated 14.2.2007 passed by the Commissioner of Customs, 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?	
3.	Whether their Lordships wish to see the fair copy of the order?	
4.	Whether order is to be circulated to the Departmental authorities.	

R.K. Srivastava

Appellant

Vs.

CC, New Delhi

Respondent

Appearance:

Shri Bipin Garg, Advocate

- For appellant

Shri B.S. Suhag, DR

- For respondent

CORAM:

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

Date of Hearing: 15.1.08

Final Order No... 265/08-SM(C.B.R.) dated 15-1-08

Per S.S. Kang

Heard both sides.

2. The appellant filed this appeal against the imposition of penalty of Rs. Two lakhs under Section 114 of Customs Act. The

matter was remanded by the Hon'ble Supreme Court. The Hon'ble Supreme Court held as under :-

“Leave granted. Having heard learned counsel for the parties, we are of the opinion that the interest of justice would be observed if the appellant who has now been served with the copy of the show cause notice dated 9.8.03, is allowed to place his case before the adjudicating authority within four weeks from date. The adjudicating authority may dispose of the matter afresh as expeditiously as possible preferably within a period of four weeks thereafter. The impugned judgment is set aside. The appeal is allowed but without any order as to costs.”

3. In pursuance to the order passed by Hon'ble Supreme Court, the adjudicating authority passed the present impugned order.
4. The contention of the appellant is that the penalty is imposed on the ground that appellant was close associate of Shri Rajesh Bhasin who is king pin of the fraud. In this case, the various non-existent firms run by Shri Rajesh Bhasin exported the goods by mis-declaring the value as well as description of goods to obtain higher drawback. The contention is that the appellant was the employee of Shri Rajesh Bhasin and he is not party to the fraud. There is no evidence on record that he was withdrawn the money

from the bank account where the drawback amounts was deposited. The contention is that the statement of bank manager specifically mentioned that bank accounts were operated by the concerned person however, some time Shri Rajesh Bhasin, the present appellant also comes to the bank for issue of pay orders or for withdrawal of cash as per the instructions of the account holder. The contention is that as the supplier of the impugned goods nowhere mentioned the name of the appellant hence this allegation was dropped. It is also submitted that the adjudicating authority's finding is that too on the inference that appellant associated with Shri Rajesh Bhasin. On this allegation, the imposition of penalty is not sustainable.

5. The contention of the Revenue is that in this case huge amount of drawback has been claimed by the exporter by exporting poor quality of readymade garments. The address of the companies was given in the bank account and other documents of the places which were taken on rent by the appellant.

6. The contention is that as the appellant was assisting Shri Rajesh Bhasin, therefore, the penalty was rightly imposed.

7. I find that in this case the adjudicating authority imposed penalty under Section 114 of Customs Act on the ground that the appellant was close associate of Shri Rajesh Bhasin. I have gone through the statement of bank manager and in their statement the bank manager nowhere stated that the present appellant was operating the account of the firms. The only evidence is that the appellant is coming to bank for transactions as per the instructions of account holder. I have also gone through the statement of Shri Rajesh Bhasin in his statement dated 27.9.99 specifically stated that the premises were taken on rent by him in the name of present appellant as he was working for him. In the adjudication order, the case of the Revenue is that Shri Rajesh Bhasin was the chief architect of this fraud, in obtaining IEC code for these firms, filing up account opening forms, affixing photographs of persons known to him, his relatives, his employees, people working for him. The appellant admitted that he was working for Shri Rajesh Bhasin but there is no evidence that he has been benefited with the

fraud or he is party to the fraud. In these circumstances, I find merit in the contention of the appellant. The impugned order is set aside and the appeal is allowed.

(Dictated & pronounced in open Court)

(S.S. KANG)
VICE PRESIDENT

RM