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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/837 - 838 & 841 / 2004-SM[BR] Date 01/12/2008

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

1. SAI SHIPPING SERVICES
D-211, PRASHANT VIHAR, DELHI 0110085
2. M/S KIRAN CARRIRERS
WZ – 485 / 12A, BASAI DARAPUR NEW DELHI

[3] M/S KIRAN CARRIERS
C/O M/S SAI SHIPPING SERVICE
D-211, PRASHANT VIHAR DELHI

SAI SHIPPING SERVICES — Appellant
Vs
C.C.E. DELHI I — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 1548 – 1550 / 2008- **SM[BR]** dated 16.9.2008 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.E. DELHI I

   C.R. BUILDING, I.P. ESTATE, NEW DELHI 110002
2. Adv. / Consult SHRI PIYSH KUMAR ADV.
   B-25, LAJPAT NAGAR –III, NEW DELHI -24.

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 - 3
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
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-1
15 Office Copy
16 Guard file

Assistant Registrar
(SM Appeal Branch)

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

Customs Appeals Nos.837-38 & 841 of 2004-SM (BR)

[Arising out of common Order-in-Original No.23 of 2004 dated 17.08.2004 and Order-in-Original No.21/2004 dated 17.08.2004, both passed by the Commissioner of Customs, New Delhi]

Date of Hearing/ Decision:16.09.2008

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 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? : No
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

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1.M/s. Sai Shipping Services & Ors.
2.Shri Kishore Kumar
3.M/s. Kiran Carriers ...Appellants

[Rep. by Shri Piyush Kumar, Advocate]

Vs.

CC, New Delhi ...Respondents

[Rep. by Shri Sansar Chand, DR]

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

Final Order No.1548-1550/08-SM(BR)/Dated:16.09.2008

Per P.K. Das :

Common issue is involved in these appeals and, therefore, all are being taken up together for disposal.

2. Appellant No.1, a Customs House Clearing Agent and Appellant No.2, G Card Holder filed appeals against imposition of penalty of

Rs.25,000/- and Rs.10,000/- respectively against Order-in-Original No.23/04 dated 17.08.2004. Appellant No.3 also a Customs House Clearing Agent filed appeal against imposition of penalty of Rs.50,000/- against Order-in-Original No.21/2004 dated 17.08.2004.

3. The Tribunal dismissed the appeals of the appellants by ex- parte Order dated 31.05.2006. The Hon'ble Delhi High Court by Order dated 19.12.2007 observed that the Tribunal did not take into consideration the individual facts pertaining to the liability, if any, of the CHA in so far as over-valuation of the goods is concerned. It has further been observed that the proper course of action would be for the Tribunal to re-consider the entire case in so far as the liability of the present appellants concerned. The Tribunal's order was set aside and the appeals will be heard afresh in the Tribunal.

4. The relevant facts of the case, in brief, are that M/s. B.G. (Overseas) Corporation (in short "exporter")) filed shipping bills for exportation of readymade garments and claimed drawbacks. On investigation, it was found that the exporter overvalued the goods for claiming draw back fraudulently. It has been alleged that the Appellants have abetted the exporter in claiming fraudulent draw back amount. The Adjudicating Authority confiscated the export container and imposed redemption fine and disallowed the drawback claims against the exporter. He also imposed penalties on the exporter and its proprietor. Further, penalties were imposed on the appellants.

5. Ld. Advocate on behalf of the Appellants submits that the Customs House Clearing Agent submitted the documents as supplied by the exporter. There is no material placed by the Revenue that the Appellants have knowledge of the alleged irregularities. He relied upon the decision of the Tribunal as under:-

(a) Ashok Jaiswar Vs. Commissioner of Customs, Mumbai 2006 (200) ELT 122 (Tribunal-Delhi)

(b) Sindhu Cargo Services Ltd. Vs. Commissioner of Customs, Coimbatore 2008 (226) ELT 282 (Tribunal-)

6. Ld. DR on behalf of the Revenue reiterates the findings of the Commissioner. He submits that CHA cannot shirk their responsibility because it was their duty to verify the correctness of the export documents. He further submits that the appellants failed to verify the documents with the goods and, therefore, penalties were rightly imposed. He relied upon the decision of the Tribunal in the case of Anil Kumar Chand Vs. Commissioner of Customs, New Delhi – 2007 (214) ELT 71 (Tribunal-Delhi).

7. After hearing both the sides and on perusal of the records, it is seen from the order of Commissioner in the case of Appellant No.1 and 2 that all four Shipping Bills, the exporter have ~~been~~ signed and filed by Shri Krishna Kumar, the Manager of Appellant No.1 without ascertaining the correct address of exporter. In the case of Appellant No.3, the finding of the Commissioner is that the CHA has taken the responsibility of filing the documents only on the basis of request of Shri Naresh Kumar without

verifying the genuineness of the exporter, since the address mentioned in the shipping bill of exporter is itself fictitious.

8. The contention of the Appellant is that representations of the exporter himself was available at the time of examination of consignment. It is revealed from record that the exporter attended in the proceeding before the Tribunal. There is no material available that CHA had knowledge of undervaluation of the goods. It is seen that the Tribunal in series of cases set aside penalty on CHA as under:-

(a) Ashok Jaiswar Vs. Commissioner of Customs, Mumbai
2006 (200) ELT 122 (Tribunal-Delhi)

The CHA has merely signed the shipping bill. In absence of evidence showing CHA being aware of declaration made in the shipping bill and supporting documents were false, penalty is liable to be set aside.

(b) Sindhu Cargo Services Ltd. Vs. CC, Coimbatore
2008 (226) ELT 282 (Tribunal-Chennai)

Functions of CHA are to verify correctness of particulars mentioned in the shipping bill accompanying declaration.

(c) Success Engineering. Vs. CC, Kandla
2007 (215) ELT 220 (Tribunal-Ahmd.)

No evidence showing knowledge/intention on CHA's part in misdeclaration of lower price with a view to wrongly avail benefit and failure/negligence, if any, on appellant's part, not to justify of imposition of penalty.

(d) Prime Forwarders Vs. CC, Kandla
2008 (222) ELT 137 (Tribunal-Adhm.)

CHA acted on basis of documents given to them and there is nothing to show that he was aware of containers being stuffed with Ferro Titanium instead of brass scrap. Hence, in absence of any evidence to the contrary providing their involvement or knowledge about misdeclaration, penalty cannot be imposable on CHA.

9. The ld. DR relied upon the decision of the Tribunal in the case of Anil Kumar Chand (supra), wherein CHA was well aware of the intention of the exporter in committing fraud as they filed shipping bills for which they were not authorised. Further, CHA in his statement admitted that exporter had explained that the retraction of the goods will be disclosed subsequently and the exporter had made arrangements and that whatever the value will be declared, will be accepted by the customs. In the present case, there is no statement available of knowledge of CHA regarding fraud committed by exporter. So, the case law is cited by the ld. DR is not available herein.

10. In the instant case, it appears that the appellants filed shipping bills on the basis of documents supplied by the exporter. Further, the representation of the exporter was accompanying the goods. Thee is no evidence to prove that the appellant had aware of fraudulent activities of the exporter. So, the imposition of the penalty on the appellants are not warranted. Accordingly, penalties on the appellants are set aside. The appeals are allowed.

Order dictated & pronounced in open court on 16.09.2008.

(P.K. Das)
Member (Judicial)

Ckp.