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

Appeal No. C/689 /2007 - CU[DB] Date 29/04/2009
C/MISC/954/08

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

To :
GLOBAL LINKERZ UNITED AGENCIES
62, SECOND FLOOR, GAGAN VIHAR, VIKAS MARG,
DELHI-51

GLOBAL LINKERZ UNITED AGENCIES Appellant
Vs
C.C. NEW DELHI (IMPORT & GENERAL) Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/154 2009 CU[DB] dated 26.03.09

passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Alongwith Misc Order No ~~C/86/09~~ C/133/09

Assistant Registrar
(Customs 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
   MR.PRADEEP JAIN,ADVOCATE
   34 GUJRAT VIHAR, VIKAS MARG, DELHI-92
3. S.D.R
4. J.C.D.R.
5. Bar association, CESTAT, New Delhi
6. Director Publications, Customs, Excise. I.P. Estate, New Delhi
7. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10. M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
12. Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15. LAWCRUX Advisors.Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision:26.3.2009

Miscellaneous Application No.954 of 2008 in Customs Appeal No.689 of 2007

Arising out of the order in original No.10/Policy/MDS/07 dated 9/10/07 passed by the Commissioner, Customs , New Delhi.

For Approval and Signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

1	Whether Press Reporter may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of 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?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

Appellant | Respondent

M/s Global Linkerz United Agencies vs. C.C.., New Delhi

Appearance:

Shri Siddharth Joshi, Advocate for the appellant
Shri Fateh Singh, Authorized Departmental Representative (DR) for the Revenue

Coram: Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Final Oral Order No. C/154/09
Misc order no. ~~C/86/09~~ C/33/09

Per M.Veeraiyan:

The application for early hearing made in pursuance of the order of the Hon'ble High Court of Delhi dated 14.11.2008 was taken up and the same was allowed as it was submitted that the licence of the applicant stands revoked vide order dated 9.10.07 and that the applicant and their employees are struggling for livelihood and are facing severe hardship and that the applicant has a strong case ,on merits, in their favour. After allowing the early hearing application, we heard both sides on the appeal.

2. The relevant facts , in brief, are as follows:

a) The appellant is a Custom House Agent since 1994 and according to the learned Advocate they have unblemished record for nearly a decade.

b) They filed two shipping bills dated 24.7.04 for export of ready-made garments on behalf of an exporter M/s M.K. International. When the consignments were examined on 26.7.04, it was felt by the Department that the consignments were of sub-standard quality and the value inflated to avail excess drawback amounting to Rs 1,64,488/= . Further, the exporter was not available in the address given in the shipping bills/IEC code.

c) On the basis of enquiry conducted under the provisions of CHALR, 2004, the Commissioner held that the appellants have failed to ascertain the genuineness of the documents relating to the export of the goods and have transacted business for non-existent/non-traceable exporter and has not taken sufficient precaution before taking up export on behalf of such exporter and accordingly, ordered revocation of licence under Regulation 20(1) of CHALR, 2004 and also ordered forfeiture of security of Rs.50,000/-

3. Learned Advocate submitted that the appellant as a CHA has taken all reasonable precautions before accepting the consignment from the exporter; that they have verified the copy of IEC code allotted by the DGFT; that they have also verified the documents relating to previous exports by exporter like documents relating to receipt of sale proceeds for the exports and drawback from the Department; that they have also received authority letter from the exporter. He submits that the appellant was not aware of the poor quality of the consignment which was sought to be exported. After making a phone call to the appellant, the consignment was delivered by the exporter at the ICD through the driver of the vehicle sent by the exporter and the consignments were actually received by the G Card Holder of the appellant

firm. Further, the consignments tallied in description and did not contain any prohibited items for export. They have no means of ensuring the genuineness of address given in the IEC certificate issued by the DGFT. He also submits that the appellant and their employees have heavily suffered financially and in other respects for the last two years.

4. Learned DR reiterates the findings of the Commissioner. He submits that the CHA has not taken reasonable precaution to ascertain the genuineness of the exporter and the documents relating to exports handled by them; that they have not dealt with the exporter directly but only through mediator. He also relies on the decision of the Tribunal in the case of Skyways vs. C.C. (Gen.), New Delhi reported in 2004 (163) ELT 474 (Tri-Del.) and Kunal Travels (Cargo) vs. C.C. (Import), New Delhi reported in 2006 (194) ELT 327 (Tri-Del.).

5. We have carefully considered the submissions from both sides and perused the records. The appellant is not disputing that the consignment sought to be exported was of sub-standard quality and therefore, the value was inflated. However, it was claimed that the appellant was not aware of the poor quality of the consignment which was sought to be exported. We find that no evidence has been relied upon to show that the appellant personally knew about the poor quality of the goods sought to be exported with intention to claim ineligible drawback. It was also submitted by the learned Advocate for the appellant that no show cause notice has been issued to the appellant under the Customs Act alleging any connivance with the exporter. We find that the appellant has taken some precautions to ascertain the genuineness of the exporter but perhaps, the same was not sufficient enough to know that the actual address of the exporter or mischief, if any, planned by the exporter as he is not traceable. However, no mala fide can be attributed to the appellant for this omission. There is also no such allegation or finding of mala fide against the appellants. Further, no drawback has been paid in this case.

6. The decisions relied upon by the learned DR are not relevant to the facts of the present case. In the case of Kunal Travels (Cargo), the decision relates to a case of suspension of CHA. In the case of Skyways, the decision related to a case of clear failure on the part of the CHA to properly supervise their employees which led to fraudulent availment of drawback.

7. Under the above circumstances, we hold that revocation of licence may not be justified and the same would be a very harsh penalty.

8. In view of the above, we set aside the order of the Commissioner (Appeals) and allow the appeal with consequential relief. Miscellaneous petition is also disposed of.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

scd/