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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/553 /2008 – SM [BR] Date 20/01/2009

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

To :
M/S INTERNATIONAL CARGO SERVICES
THROUGH ITS PROPRIETOR,SHRI SHASHI GAUR,40,
MOTI BAGH-II,NEAR NANAKPURA
GURUDWARA,NEW DELHI.

M/S INTERNATIONAL CARGO SERVICES — Appellant
Vs
C.C. (EXPORT) NEW DELHI — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 84 / 2009 - **SM[BR** dated 16.1.2009 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. (EXPORT) NEW DELHI
   AIR CARGO EXPORT, NEW CUSTOM HOUSE, NEW DELHI 110037
2. Adv. / Consult
   MR.MANOJ SHARMA
   68, TODAR MAL ROAD, BENGALI MARKET, NEW DELHI-110001.
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 & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

Customs Appeal No. 553 of 2008 (SM)

[Arising out of the Order-in-Appeal No. CC (A)/Cus/Exp/ D-I/186/2008 dated 24/04/2008 passed by The Commissioner of Customs (Appeals), New Custom House, New Delhi.]

For Approval and signature :
Hon'ble Shri Rakesh Kumar, Member (Technical)

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 Department Authorities?	:

M/s International Cargo Services — Appellant

Versus

CC, New Delhi — Respondent

Appearance

Shri Manoj Sharma, Advocate – for the appellant.

Shri S.K. Panda, Authorized Representative (Jt. CDR) – for the Respondent.

CORAM : **Hon'ble Shri Rakesh Kumar, Member (Technical)**

DATE OF HEARING : 11/12/2008.
DATE OF DECISION: 16-01-2009..

Final Order No. 84/09-SM(BR) Dated : 16/01/09

Per. Rakesh Kumar :-

The Appellant are a Custom House Agent. The facts of the case against them, in brief, are that M/s Ritambara International, New Delhi, is a non-existent firm which is exporting very low value ready made garments under drawback claim by over invoicing the same. The officers of SIIB, Air Cargo, export Commissionerate, New Delhi initiated inquiry into S/Bill No. 5150810 dated 27/04/04 filed by M/s Ritambara International. On inquiry it was found that –

(a) this S/Bill had been filed through the CHA – M/s Super Air Cargo Services and Shri Vinay Chauhan, a 'G' – Card holder of M/s Super Air Cargo had filed the Shipping Bill ;

(b) Shri Vinay Chauhan named one Shri Sanjay Kumar as the person who had given the documents to him but neither any authorization was given by Shri Sanjay Kumar, nor Shri Vinay Chauhan insisted on the same ;

(c) Shri Sanjay Kumar named Shri Saleem Khan as Proprietor of M/s Ritambara International but the address, as given by Shri Sanjay Kumar, was found to fictitious ;

(d) M/s Ritambara International, had exported under drawback claim goods declared as "readymade garments of cotton/rayon" in past, involving total drawback of Rs. 9,08,597/- under Shipping Bills No. 6129966 dated 25/5/01, 6129968 dated 22/5/01, 6129967 dated 22/5/01, 6129973 dated 22/5/01, 6250068 dated 22/10/01, 6250057 dated 22/10/01, 6250256 dated 22/10/01 and 6250059 dated 22/10/01, but as per the bank records no remittance had been received in respect of these exports while the drawback had been paid ; and

(e) in the computer printout of the above-mentioned shipping bills, the name of the Appellant – M/s International Cargo Services, was mentioned as the CHA through whom these S/Bills had been filed.

1.1 Based on the above investigation, a show cause notice dated 24/12/04 was issued to M/s Ritambara International and other persons including the Appellant involved in the case for recovery of drawback and imposition of penalty. The Additional Commissioner vide order-in-original dated 31/03/06, besides confirming the drawback demand of Rs. 9,08,597/- against M/s Ritambara International, imposed penalty of Rs. 10,000/- on the Appellant under Section 114 of the Customs Act, 1962 for abetment of the offence of M/s Ritambara International. On appeal by the Appellant against the Additional Commissioner's order, the CC (Appeal), New Delhi vide the impugned order-in-appeal dated 24/4/08 upheld the Additional Commissioner's order and dismissed the Appellant's appeal. It is against this order of CC (Appeal) that the present appeal has been filed.

2. Heard both the sides.

2.1 Shri Manoj Sharma, Advocate, the learned counsel for the Appellant made the following submissions :-

(1) The Shipping bills, in question, have not been filed by the Appellant and they have nothing to do with the Exporters – M/s Ritambara International. Just because the name of the Appellant as the CHA appears on the Shipping bills filed by M/s Ritambara International, it cannot be concluded that these S/bills had been filed through the Appellant.

(2) The Appellant had never been engaged as CHA by M/s Ritambara International and only their names and CHA licence number had been used by somebody without their knowledge. No document bearing the signatures of any employee of the Appellant has been produced by the Department indicating that the export clearance of the consignments, covered by the S/Bills, in question, had been handed by the Appellant.

(3) The Appellant vide their letters dated 10/09/02, 21/10/02 and 25/10/02 addressed to the Deputy Commissioner of Customs, ICD, Patparganj, New Delhi, had complained to the Department that some persons are using their name and CHA licence No. on the export documents without their permission, that two such shipping

bills are No. 1259420 dated 19/10/02 and No. 1259430 dated 19/10/02, that these S/Bills have not been filed by him and that they are enclosing the names and sample signatures of the staff who follow the consignments. In spite of this, no action was taken by the Custom House on the Appellant's letters.

(4) This is a clear case where their name and licence number has been misused by somebody.

(5) In course of clearance from custom; whether of import or export consignments, "job-sheet", "check list", and other documents are signed by the CHA. No such documents bearing the signatures of the Appellant's staff have been produced by the Department.

(6) In view of the above, there is no justification for imposition of penalty on the CHA.

2.2 Shri S.K. Panda, the learned Jt. CDR made the following submissions :-

(1) The processing of Shipping Bills in respect of export consignments is done by EDI System, in course of which the CHA employees have to produce their identity card – G card or H-Card at the following stages –

(i) When the CHA brings the finalized copy of the check list alongwith terminal charges receipt, processing list, invoice, customs Declaration, authorization from exporter, and Airway bill, collectively called "customs bench", to the CMC for registration of S/Bill.

(ii) When the CHA carrying his "customs bunch" and identity approaches the customs office in the Export Shed for examination of the goods ;

(iii) When the CHA approach the customs Superintendent for "let export" order ; and

(iv) When the CHA approaches the Airport authority for handing over the goods.

At all these stages without identity card, the CHA or his employee can not deal with the customs or Airport authority. It is, therefore, impossible for a person to operate in name of a CHA without his consent or knowledge. In view of this, when the shipping bills, in question, mention the Appellants name as the CHA, it is the Appellants who must have handed the shipments.

(2) In view of the above, even if no documents bearing the signatures of the Appellant's staff have been produced by the Department, appearance of the Appellant's name as CHA in the S/Bills filed by M/s Ritambara International, is sufficient evidence that the consignments had been handled by the Appellants.

3. I have carefully considered the submissions from both the sides. There is no dispute about the facts that – (a) the EDI printout of the Shipping bills No. 6129966 dated 25/5/01, 6129968 dated 22/5/01, 6129967 dated 22/05/01, 6129973 dated

22/5/01, 6250068 dated 22/10/01, 6250057 dated 22/10/01, 6250256 dated 22/10/01 and 6250059 dated 22/10/01 filed by M/s Ritambara International, show the name of the Appellant – M/s International Cargo Services, as the CHA;

(b) M/s Ritambara International is a non existent fictitious entity ; and

(c) other than the EDI printout of the above-mentioned shipping bills mentioning the Appellant's name as the CHA, there is no other document bearing the signatures of the Appellant or their staff showing that these consignments had been handed by the Appellant.

The point of dispute is as to whether just because the name of the Appellant appears as the handling CHA in the shipping bills filed by M/s Ritambara International, it can be concluded that it is the Appellant who had handled these export consignments as CHA. The Appellant's contention is that they have not filed these shipping bills and somebody has misused their name and CHA name, while the Department's contention is that since under EDI System, identity of the CHA is checked at various stages from the stage of filing job sheet, shipping bill and during customs examination of the goods, the Appellant's claim of somebody else filing shipping bills by using their name and CHA licence number, is not possible.

4. The Appellant have pleaded that they, vide their letters dated 10/09/02, 21/10/02 and 25/10/02 had complained to the Deputy Commissioner that their name and licence number is being misused through the computer system by some agents, that two shipping bills No. 1259420 and 1259430 dated 19/10/02 show their name as the CHA while those shipping bills have not been filed by them and that though copies of these letters had been enclosed with reply to the show cause notice, no finding on this plea has been given either by the Additional Commissioner in the order-in-original dated 31/3/05 or by the CC (Appeals) in the impugned order-in-appeal dated 24/04/08. On going through the records, I find that the above plea of the Appellant is correct. If the letters dated 10/9/02 and 21/10/02, complaining about misuse of their name and licence number by some other agent and specifically mentioning two shipping bills No. 1259420 and 1259430 dated 19/10/02 in this regard and letter dated 25/10/02 giving the list of their staff (G & H Card holders) alongwith their sample signatures, had actually been received by the Deputy Commissioner and if the Appellant's claim that S/Bills No. 1259420 and 1259430 dated 19/10/02 had been filed by

somebody else unauthorisedly by using their name and licence number, is correct, the Department's claim that because of checking of identity of the CHA's staff at various stages it is not possible for a CHA to file the S/Bill and handle the cargo in the name of another CHA is not possible, would not be correct. The Appellant's claim regarding misuse of their name and CHA number by other in Shipping bills No. 1259420 dated 19/10/02 and 1259430 dated 19/10/02 mentioned in their letters dated 10/9/02 and 21/10/02 could have been cross checked by the Department from its records. But, unfortunately, the order-in-original and the impugned order-in-appeal are silent on this vital point. This aspect has to be considered and a finding has to be given by the original adjudicating authority for which this matter has to be remanded.

5. In view of the above discussion, the impugned order is set aside and the matter is remanded to the original adjudicating authority for denovo adjudication of this matter as per the direction in para '4' above.

(Pronounced in open court on 16/01/09.)

(Rakesh Kumar)
Member (Technical)

PK