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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/569 /2009 – SM[BR]&C/STAY/2697/2009,C/MISC/784/2009-SM[BR] Date 18/09/2009

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

To :
M/S RINKU INTERNATIONAL

GADAIPUR, NEAR FOCAL POINT, JALANDHAR.

M/S RINKU INTERNATIONAL Appellant

Vs

C.C. (PREVENTIVE) AMRITSAR Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1144/2009-SM[BR]&S/530/09&M/197/09 dated 17.9.2009

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. (PREVENTIVE) AMRITSAR

CUSTOM HOUSE, CENTRAL REVENUE BUILDING, THE MALL, AMRITSAR 143001.

2. Adv. / Consult

MR.SUDHIR MALHOTRA.

13-R, HUKAM CHAND COLONY, NEAR D.A.V COLLEGE, JALANDHAR

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
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Assistant Registrar
(SM Appeal Branch)

**DASTI**

**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 Misc. Application No. 784 of 2009 and Stay Application No. 2697 of 09 in Appeal No. 569 of 2009 (SM)**

[Arising out of the Order-in-Original No. 11/Cus/2009 dated 07/09/2009 passed by The Commissioner of Customs (Prev.), Amritsar. ]

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 Rinku International — Appellant
[Shri Sudhir Malhotra, Advocate]

Versus

CCE, Amritsar — Respondent
[Shri Surendra Shah, Auth. Rep. (JDR)]

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

**DATE OF HEARING : 17/09/2009.**

Final Order No. 1144/2009-SM(BR) E.S/530/09-SM/197/2009-SM(BR) Dated : 17.9.09

**Per. Rakesh Kumar** :-

This is an appeal against the order-in-original No. 11/CUS/2009 dated 07/09/09 passed by Commissioner of Customs (Preventive), Amritsar alongwith an application for waiving the requirement of pre-deposit of penalty imposed on the appellant for hearing of this appeals. The facts of the case leading to this appeal, in brief, are as under :-

1.1 The appellant filed two shipping bills No. 1140130 and 1140131 both dated 23/07/09, for export of two consignments of hand tools declared to be collectively valued at Rs. 82,54,991/-. The export was under drawback claim. In each of the shipping bills, the weight of the goods was also declared in the shipping bill No. 1140130 dated 23/07/09 the declared weight was 23210 Kg. and in shipping bill No. 1140131 dated 23/07/09 the declared weight was 24382 kg. The rate of drawback on the goods was 12% of the FOB value, with cap of 18.8 per kg. When the goods were presented to the customs for examination, in both the shipping bills, the actual weight was found to be about 26% less.

The shortage in bill of shipping No. 1140130 was 8020 kg. and the shortage in other shipping bill No. 1140131 was 4480 kg. On account of the actual weight being less than the declared weight, the admissible drawback amount was Rs. 2,31,294/- less than the drawback amount claimed. The Customs Authorities, therefore, were of the view that the appellant, in order to claim higher drawback, have deliberately misdeclared the quantity and it is on this basis that the department sought to initiate proceedings for confiscation of the goods for misdeclaration and imposition of penalty. The appellant waived the issue of show cause notice and thereafter the Commissioner vide order-in-original No. 11/CUS/2009 dated 07/09/09 ordered confiscation of the goods covered by both the shipping bills under Section 113 of Customs Act with option to be redeemed for taking the goods back on payment of redemption fine of Rs. 10,00,000/- (Rupees Ten Lakhs) and beside this, also imposed penalty of Rs. 5,00,000/- (Rupees Five Lakhs). The appellant being aggrieved by this order, have filed the present appeal alongwith stay application.

2. Heard both the sides.

2.1 Shri Sudhir Malhotra, Advocate, the learned Counsel for the appellant pleaded that the difference in quantity is on account of mixing of the export consignments, that there is no difference in the number of pieces or description of the goods and the value mentioned in the invoices is per piece and, hence, there is no misdeclaration of value, and that difference in weight is not relevant as the drawback cap of Rs. 18.8 per unit means cap of Rs. 18.8 per piece and not Rs. 18.8 per kg., as contended by the Department. He also pleaded that while according to the Department, the excess drawback claim is only Rs. 2,31,294/-, the penalty of Rs. 5,00,000/- and redemption fine Rs. 10,00,000/- is excessive. Pleading that the Appellant want to export the goods he sought waiver of the requirement of pre-deposit of penalty for hearing of this appeal and taking up this appeal for final disposal [illegible] as the goods are incurring heavy demurrage and also pleaded for setting aside the confiscation and penalty.

2.2 Shri Surendra Shah, the learned Departmental Representative, pleaded that this is the case of deliberate misdeclaration of the quantity with intention to claim higher drawback, that the value cap of Rs. 18.8 per unit mentioned in the Drawback Schedule is Rs. 18.8 per kg. and not Rs. 18.8 per piece, - a fact which is clear from the Drawback schedule itself, that weight is very much relevant for drawback and the same had been over-declared in order to claim higher quantum of drawback, that misdeclaration of the quantity makes this export in contravention of the prohibitions imposed under Section 11 of the Customs Act and hence the goods have been rightly confiscated and the penalty has been rightly imposed. He pleaded that looking to the facts of the case, there is no case for waiver or reduction of redemption fine and penalty.

3. I have carefully considered the submissions from both the sides and perused the records. Though this matter is listed as short matter, the same being in respect of a live consignment, where the goods are awaiting clearance for export, is being taken up for final disposal today. In fact in the order dated 10/9/09 for listing of this matter today, the Registry had been directed to list the stay application alongwith the appeal for regular hearing today.

4. In this case, there is no dispute about the fact that the actual weight of the consignment is 12,501 kg. less than the declared weight. Since the drawback cap is Rs. 18.8 per kg, in the event of drawback amount based on 12% of FOB value being more than the amount on the basis of weight, at the rate of Rs. 18.8 per kg., it is the amount based is the cap of Rs. 18.8 per kg. which would be admissible. Therefore, the misdeclaration in respect of weight would have bearing on the quantum of drawback to which the exporter would be eligible. Though the appellant plead that the difference in the weight is on account of mixing of the export

consignments meant for different overseas buyers, this plea is difficult to accept, as, at the same time, it has been pleaded that there is no difference in the description of the goods, value and the number of pieces. I, therefore, hold that the weight has been misdeclared with intention to claim higher drawback and hence the goods have been correctly confiscated under the provisions of Section 113 of the Customs Act, 1962 and the penalty has been correctly imposed on the appellant under Section 114. However, since as per the adjudication order itself, the quantum of the higher drawback which the appellant have claimed is only Rs. 2,31,294/-, the redemption fine of Rs. 10,00,000/- and penalty of Rs. 5,00,000/- would be excessive if the goods are exported. In view of these circumstances, and since the Appellant want to export these goods, for **the purpose of export, I reduce the redemption fine to Rs. 2,00,000/- (Rupees Two lakhs)** and **penalty to Rs. 1,00,000/- (Rupees One Lakh)**. The appellant are given this option to export the goods on payment of reduced redemption fine and reduced penalty within a period of one month from the date of this order and on export of the goods, the appellant would be eligible for drawback, admissible under the provisions of the Customs Act, 1962. If, however, the appellant do not export the goods and decide to take the goods back, they would have to pay redemption fine and penalty, as mentioned in the impugned order. The impugned order stands modified as above, and the appeal and the stay application stand disposed off, as above. Miscellaneous application is also disposed off. Order is **Dasti**.

(Dictated and pronounced in open court)

**(Rakesh Kumar)**
**Member (Technical)**

PK