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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/ 232, 233 /2005,235 /2005 - CU[DB] Date 13/01/2009

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

To :
SHRI ROHITASH BHOMIA
108, HOPE APARTMENTS, SECTOR 15/11,
GURGOAN, HARYANA.
SHRI ROHITASH BHOMIA Appellant

Vs

COMMISSIONER OF CENTRAL EXCISE Respondent
(ADJUDICATION) NEW CUSTOM HOUSE, NEW
DELHI

I am directed to transmit herewith a certified copy of **Final order No.**C/9-11/09-CUS. DATED 06.01.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(Customs Appeal Branch)

Copy to :
1. Respondent
COMMISSIONER OF CENTRAL EXCISE (ADJUDICATION)
ROOM NO. 133, 134, NEW CUSTOM HOUSE, NEW DELHI
2. Adv. / Consult
MR.A.K. MISHRA (CONSULTANT)
B-25, LAJPAT NAGAR-III, NEW DELHI.
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-15
15 Office Copy
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Assistant Registrar
(Customs Appeal Branch)

p.t.o

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision:6.1.2009

Customs Appeal Nos.232, 235 & 233 of 2005

Arising out of the order in original No.11/HKM/CC/DRI/NCH/2004 dated 23.8.04 passed by the Commissioner (Adj.), Central Excise , New Delhi.

For Approval and Signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (judicial)

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

Appellants | Respondent

Shri Rohitash Bhomia
M/s G.R. Magnets Ltd.
Shri Naresh Jain

vs.

C.C.E. (Adj)
New Delhi

Appearance:

Ms. Reena Rawat and Shri Amar Gupta, Advocates for the appellants
Shri Vijai Kumar, Authorized Departmental Representative (DR) for the Revenue

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

Final

Order No. 9 - 11/09.

Per M. Veeraiyan:

These three appeals arise out of the same order in original. There are other parties to the said order in original; it is informed that in respect of some of the parties, the appeals have been dismissed for non-compliance of the terms of the stay order and in the case of R.A. International and three others appeals have been finally disposed of vide Final Order No.15-18/C I-Cus. Dated 10.1.2007 in Customs Appeal Nos.854-857 of 2004.

2. Heard both sides.

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

a) The investigations revealed that M/s SMPL , M/s RAI and M/s Angel Marketing & Finance Pvt. Limited, Mumbai (hereinafter referred to as AMFPL) had exported Tape Deck Mechanisms and DC micro motors through ICD, Patparganj under the DEPB Scheme. They misdeclared the FOB value of the above goods and on the basis of this misdeclaration, they claimed ineligible and excessive DEPB credits, which were not otherwise admissible to them. The investigations further revealed that M/s SMPL, M/s RAI and M/s AMFPL had reported to have purchased the said Tape Deck Mechanisms/DC micro motors from M/s G.R. Magnets Ltd. , Jamshedpur (hereinafter referred to as GRML), but the said company was found having no plant/machinery or other infrastructure to manufacture the said goods; that the said goods were purchased by GRML in finished condition through one of their sister companies M/s Prakash Electronics Systems Ltd., Kolkata (hereinafter referred to as PESL) from M/s Elin Electronics Ltd. (EEL), Ghaziabad directly as well as through their distributor M/s Sphinx Worldbiz Ltd., New Delhi at a much lower price, but they inflated the value of the said goods to claim more DEPB credit by showing as if the goods were manufactured and supplied by M/s GRML. On the basis of their fraudulent claims, M/s RAI obtained five DEPB licences for a total duty credit of Rs.90,64,310/- , M/s SMPL obtained nine DEPB licences for total duty credit of Rs.1,52,26,842/- and M/s AMFPL obtained ten DEPB licences for a total duty credit of Rs.1,73,37,028/- against these exports. M/s AMFPL then sold their DEPB licences to different parties who utilised the said licences to offset the customs duty liabilities on their respective imports. The investigations further revealed that Shri Parasmal Rampuria, Managing Director of GRML and authorised signatory of PESL mastermined the entire fraudulent operation in collusion with the partners of M/s RAI. Similar modus operandi was adopted by Shri Parasmal Rampuria in respect of exports made by M/s SMPL and M/s AMFPL, which were his own companies though he had roped in different persons/his own employees as front men/signing authorities in these companies.

b) The Commissioner has held that the goods were procured at a very nominal price and changed hands through intermediary firms and exported at highly inflated value (17 to 18 times of the original procurement price) and obtained inflated DEBP benefits. Accordingly, he confirmed the duty on various parties who have imported using the said DEPB scrips and and penalties on various persons found to have been involved directly in the fraudulent export or in abetting in the said fraudulent exports.

c) By the said order, the appellants Shri Rohitash Bhomia, Shri Naresh Jain and M/s G.R. Magnets Ltd. have been imposed penalties of Rs.22 lakhs, Rs.7 lakhs and Rs.10 lakhs respectively for their roles in fraudulent exports made through different export firms.

4.1. Learned Advocate, on behalf of the appellant Shri Naresh Jain, submits that he was made a Director in Prakash Electronics Systems Ltd.(PESL) by Shri Parasmal Rampuria who is the Director of M/s G.R. Magnets Ltd.; he introduced one Shri Doshi to Shri Parasmal Rampuria who made Shri Doshi as a Director of AMFPL which is one of the exporting company; no statement has been recorded from him; as the show cause notice has not been received by him, no reply has been furnished by him ; a penalty of Rs.10 lakhs has been imposed on PESL; there was no allegations in the show cause notice specifying his role; that the findings against him is that he introduced one Shri Hitendra N. Doshi who was made Director of the export company controlled by Parasmal Rampuria and no other evidence is relied upon against him. Therefore, there is no justification for imposition of the penalty on Shri Naresh Jain.

4.2. Learned Advocate, on behalf of M/s G.R. Magnets Ltd., submits that the unit was registered with Excise authorities; they had electricity connection.

It was admitted that there was no plant and machinery installed in the company. It is also admitted that AR-4s were prepared by the company in relation to the exports. However, it was also claimed that M/s G.R. M. L. had no role in the alleged fraudulent exports by the firms. It was admitted that no reply was filed by them. She seeks waiver of penalty. Alternatively, she seeks leniency in the quantum of penalty imposed as the company stood closed for a long time and assets have been taken by the Bihar Financial Corporation.

4.3. Learned Advocate on behalf of Shri Rohitash Bhomia submits that he has rendered some help to Shri Parasmal Rampuria purely on business consideration as Shri Parasmal Rampuria was buying cast alloys, permanent magnets from him. He introduced some companies to the bank for the purpose of opening bank accounts, recommended a CHA, signed documents like DEPB declaration and collected documents from the customs only at the instance of and on the request of Parasmal Rampuria and no additional consideration has been received by him for such help. It was admitted that he is the Chairman of Uttam International looked after by his father at UAE. It was also submitted that he had no idea as to what happened to the goods imported by the said Uttam International at UAE.

5. Learned SDR submits that this is a case of organised fraud involving claims of ineligible and excess DEPB credit by highly inflating the export value with consequences of manipulated transfer of money. He submits that all three appellants are closely involved in the fraudulent exports by abetting in those exports and he drew our attention to the findings of the Commissioner in respect of each of them. He also submitted that in the case of R.A. International and three others appeals have been finally disposed of vide Final Order No.15-18/C I-Cus. Dated 10.1.2007 in Customs Appeal Nos.854-857 of 2004. In the

said order the Tribunal has held that the exports have overvalued with a view to claim ineligible DEPB benefits.

6.1. We have carefully considered the submissions from both sides. We are concerned with the appeals filed by the above-mentioned three parties. We are not going into the merits of the case against the other parties to the order of the Commissioner.

6.2. As regards Shri Naresh Jain, we find that there is no specific allegation in the show cause notice about his role in the fraudulent exports or abetment of the same. On the other hand, in para 169 of the order in original, the Commissioner has clearly held that Parasmal Rampuria is the master mind and key person who roped in different companies as well as persons in his activities of DEPB export fraud. Further, we find that there is separate penalty imposed on Prakash Electronics Systems Ltd. (PESL) in which Shri Naresh Jain is the Director. Though, we are not dealing with the appeal of PESL, in the given facts and circumstances of the case, we are not inclined to uphold a separate penalty on Shri Naresh Jain.

6.3. As regards imposition of penalty on M/s G.R.M.L., we find that admittedly, the company did not have any plant and machinery in working condition. They have merely purchased the export-goods from Elin Electronics Ltd. through PESL but shown them as if manufactured by them by manipulating the raw material and production records. They have shown sale at highly inflated prices to the exporting firms to enable inflation of the export price with a view to claim excess DEPB benefits. For example, the goods invoiced by the actual manufacturer at Rs.36.17 was shown to have been sold by PESL at Rs.44.47 to M/s G.R.M.L. who has shown sale at Rs.430/-. It is noticed that they have fabricated the records and accounts relating to inputs and finished goods to show that the goods were manufactured in their premises. These facts are admitted by Parasmal Rampuria, Director of G.R.M.L. which have been corroborated by the documentary evidences as well as by the statements of other parties . The involvement of G.R.M.L. in the irregular exports by abetting the said exports in the manner mentioned above is clear. Therefore, there is justification for imposition of penalty. However, having regard to the entire facts and circumstances of the case, we reduce the penalty from Rs.10 lakhs to Rs.5 lakhs (rupees five lakhs).

6.4 As regards Shri Rohitash Bhomia, we find that he is involved himself very closely with Shri Parasmal Rampuria of G.R.M.L. in procuring materials, facilitating the opening of the accounts for exporting firms, choosing CHA for handling customs work, signing export documents and collecting documents from the customs. In addition, he is admittedly the Chairman of Uttam International UAE who is one of the importers of the manipulated exports from India. From his house, several incriminating documents relating to various activities of the exports have been recovered as detailed in para 167 of the order in original. His claim that he had no idea as to what happened to the goods imported by the said Uttam International is not acceptable. It suffices to say that he had knowledge of, and has also involved himself in, several activities relating to the fraudulent exports. In view of the above, imposition of penalty on him is warranted. However, the learned Advocate submitted that there is no evidence of any consideration received by him for his alleged role. In view of the above and having regard to the entire facts and circumstances of the case, the penalty imposed is reduced from Rs.22 lakhs to Rs.5 lakhs (rupees five lakhs).

7. Appeals are disposed of in the above terms.

(Dictated and pronounced in open Court)

(M. Veeraiyan)
Member (Technical)

(P.K. Das)
Member (Judicial)