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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/553-554 /2006,572 /2006-573 /2006 - CU[DB]   Date 15/04/2009

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

To :
M/S GLOBAL MARINE AGENCIES
4, MADHO BAGH, CHOPASNI ROAD, JODHPUR

M/S GLOBAL MARINE AGENCIES   Appellant
Vs
C.C.E. JAIPUR   Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/117-120 2009 CU[DB]** dated 31.03.09 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
   C.C.E. JAIPUR
   NCRB,STATUE CIRCLE,C-SCHEME,JAIPUR
2. Adv. / Consult
   MR.K.K ANAND, ADV., A-5,BASEMENT,
   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-15
15. LAWCRUX Advisors (P) Ltd, Law House,1-8,Sector - 10, Faridabad 121003 (Haryana)
16. Office Copy
17. Guard file
18. M/S J.K.METALS.
    BEHIND DERBY TEXTILE, BIHARI COLONY,
    2ND PHASE,BASNI,JODHPUR.

Assistant Registrar
(Customs Appeal Branch)

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI

COURT – III

CUSTOMS APPEAL NO. 553-554 & 572-573 OF 2006

[Arising out of Order-in-Appeal No. 375-377(HKS)CUS/JPR-II/2006 dated 13.06.2006 passed by the Commissioner (Appeals-II), Customs & Central Excise, Jaipur]

For approval and signature:

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

1.	Whether Press Reporters may be allowed to see the order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it would be released under Rule 27 of the 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

M/s. Global Marine Agencies,
M/s. J.K. Metals — Appellants

Vs.

Commissioner of Customs, Jaipur — Respondent
& vice versa

Appearance:

Shri Hemant Bajaj, Advocate for the Appellants;
Shri Fateh Singh, D.R. for the Revenue

Coram:

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

Date of hearing/decision: 31st March, 2009

FINAL ORDER NO. C/117-to 120/09 **dated** ________

Per M. Veeraiyan:

Two appeals by the parties and two appeals by the Department arise out of common Order-in-appeal and, therefore, they are being dealt with by a common order.

2. Heard both sides.

3. The relevant facts, in brief, are that M/s. J.K. Metals purchased on high-sea sale basis two consignments from one M/s. Glaxy Trading Company who imported the consignments from Jordan and declared the same as Heavy Melting Steel Scrap; that the said consignments were accompanied by Pre-inspection certificates issued by M/s. Alex Stewart (Assayers) Ltd. (who are one of the prescribed inspection agencies in terms of Para 2.32 of Handbook of Procedures – Vol. I of the Foreign Trade Policy – 2004-09); that the consignments were examined and it was found that out of 183.160 M.T. of Heavy Melting Steel Strap declared by the importer a quantity of 99.861 M.T. were used war materials like used explosives including two suspected live cartridges (which was subsequently found to be only used ones). The original authority confiscated absolutely 99.861 M.T. of used war materials

valued about Rs. 12 lakhs. He also imposed penalty of Rs. 50,000/- on M/s. J.K. Metals and Rs. 20,000/- on Global Marine Agencies, the Custom House Agent (C.H.A.) who had handled the consignments. The parties filed appeal before the Commissioner (Appeals) against the order of the original authority and, the department also filed appeals seeking order of confiscation of the balance quantity of material. The Commissioner (Appeals) rejected the appeals by the department as well as by the parties.

4. Learned Advocate for the parties submits that M/s. J.K. Metals purchased the consignments on high sea sake basis from M/s. Glaxy Trading Company; that they have received the consignments along with the prescribed Pre-inspection certificate from the duly authorized agency; that they had no knowledge about the offending nature of the materials; that they incurred heavy loss as substantial quantity of the material imported by them has been confiscated; that under these circumstances penalty imposed on the importer should be set aside. He also submits that C.H.A. has handled the consignment in the normal course based on the documents given to them and, therefore, no penalty is imposable on them. He also opposes the prayer of the department for confiscating the Heavy Melting Steel Scrap which was allowed clearance by the orders of the authorities below.

5. Learned D.R. submits that more than 50% of the material was found to be used war materials; that Pre-inspection certificates produced,

on the face of it, are not valid for the import of the consignment; that the entire consignment should be treated as not covered by valid Pre-inspection certificates and the same should be confiscated; that in the nature of the case, penalty imposed on the parties are also justified.

6. We have carefully considered the submissions from both sides. In this case it is not denied that the imported consignments contained 99.861 M.T. of used war material which stands confiscated. The confiscation of such used war material is not being challenged by the parties. However, it was submitted that the importer had no knowledge of supply of war materials which is contrary to the certificates of the authorized agency and they were put to severe loss on this account. We do not find any evidence of knowledge on the part of the importer about the objectionable material contained in the consignments. It is also noticed that the consignment has been accompanied by prescribed certificates from authorized agency. The examination report by the Customs/Police authorities clearly throw serious doubt on the manner of inspection carried out by the authorized inspection agency and on the authenticity of the certificate issued by the Agency. However, for failure of the inspection agency penalties on the importer and on the C.H.A. are not justified. If the inspection agency has not done their work properly, it is for the D.G.F.T. authorities to take appropriate action as per law against the inspection agency, including cancellation of power of inspection given to them. We find that 99.861 M.T. of material for which importer

has paid for stands absolutely confiscated. The balance material of 83.249 M.T. Heavy Melting Steel Scrap is not prohibited for import. It has not been proved that these material was used for concealing the war materials. In the given facts and circumstances of the case, we are not inclined to agree with the prayer of confiscation of such material under Section 119 of the Customs Act as no evidence of any concealment has been adduced on record.

7. In the light of above, we reject the appeals by the department. We allow the appeals by the parties with consequential relief as per law.

(Dictated & pronounced in the Open Court.)

(M. VEERAIYAN)
MEMBER (TECHNCIAL)

(P.K. DAS)
MEMBER (JUDICIAL)

RK