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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/ 175-176 /2006 - CU[DB] Date 04/05/2009

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

To :
THE COMMISSIONER OF CENTRAL EXCISE : DELHI III
UDYOG MINAR, VANIJYA NIKUNJ, UDYOG VIHAR,
PHASE-V, GURGAON (HARYANA)

THE COMMISSIONER OF CENTRAL EXCISE: DELHI III Appellant

Vs

M/S OM PRAKASH RAHUL KUMAR Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/167-168/ 2009 CU[DB]** dated 25.03.09 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 M/S OM PRAKASH RAHUL KUMAR,
606-607, KATRA ISHWAR BHAWAN,
KHARI BAOLI NEW DELHI - 110006

2. Adv. / Consult MR. K. KANT, ADV.
C/O M/S OM PRAKASH RAHUL KUMAR,
606-607, KATRA ISHWAR BHAWAN,
KHARI BAOLI NEW DELHI - 110006
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
18. ROSHAN LAL LALIT MOHAN,
7, NEW GADODIA MARKET,
KHAORI BAOLI, DELHI – 110 006.

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:25.03.2009

Customs Appeal Nos. 175 & 176 of 2006
[Arising out of Order-in-Original No. 26-27/2005 dated 31.5.2005 passed by the Commissioner of Central Excise, Delhi-III].

For approval and signature:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, 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.	No
2	Whether it should 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

CC, Delhi-III — Appellant

Vs.

M/s Om Prakash Rahul Kumar — Respondent
M/s Roshan Lal Lalit Mohan

Appearance:

Appeared for the Appellant – Mr. Fateh Singh, DR
Appeared for the Respondent – Mr. K. Kant, Adocate

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

Final Oral Order No. C/167-168/09

Per M. Veeraiyan:

These two appeals by the Department involve substantially the same issue and accordingly are being disposed of by a common order.

2. Heard both sides.

3. The respondents imported consignments of Pista Kernel from Dubai during October 03,February and May 2004 and claimed the benefit of exemption under Notification No. 76/2003 available to goods of Afghanistan origin. They produced the following documents in support of their claim.

i) Exporter's invoices issued by M/s Sakhi Zade Herave Co. Limited, Afghanistan.

ii) Transit certificates issued by Government of Afghanistan.

iii) Certificates of origin in the prescribed proforma, under IAPTA rules of origin and

iv) Certificates of origin issued by Dubai Chamber of Commerce.

4. The assessing authorities granted the benefit of exemption and allowed clearance of the consignments. Subsequently, the Department issued show cause notices dated 4-4-2005 to both the respondents alleging that there were certain discrepancies in the certificates of origin produced by them and that para 11 and 12 of the certificates were not duly filled and signed by the exporters based in Afghanistan and that the exemption was incorrectly availed . The show cause notices proposed demand of duty and imposition of penalties. The Commissioner dropped the proceedings initiated by the show cause notices against both the respondents.

5. Learned DR apart from reiterating the grounds of appeal, specifically submitted that the Commissioner has not fully considered the report dated 7.4.2005 from DRI as he has ignored that part of the report regarding reference having been made to Afghanistan Embassy through COIN, Dubai to verify the authenticity of the certificates produced; that the Commissioner has not taken into account the fact that the respondents have clearly admitted to the discrepancies in the certificates of origin produced by them; and that para 11 and 12 of the certificates were not duly filled and signed by the exporter based in Afghanistan.

6. Learned Advocate for the respondents reiterates the finding of the Commissioner. In respect of Appeal No. C/176 of 2006, he also submits that the documents were subsequently certified to be authentic by the Afghanistan Embassy based in Delhi.

7. We have carefully considered the submissions from both sides and perused the relevant records. The imports have taken place during October 03, February 04 and May 2004. The respondents have produced documents relating to export from Afghanistan to Dubai and the connecting documents relating to import from Dubai to India. The discrepancies which are sought to be relied were there in the documents presented$ before the authorities at the time of assessment and in spite

of the same, assessments have been completed allowing the benefit of exemption claimed. Under these circumstances, the allegation of suppression or wilful misstatement on the part of the respondents cannot be upheld as canvassed by the learned DR. Further, the discrepancies have only raised certain doubts about the authenticity of the documents produced. The department has made efforts to verify through DRI the authenticity of documents produced as seen from the report dated 7.4.2005 of the DRI. However, even after four years, we are told that no report confirming the suspicion of the department about the genuineness of the documents produced is forthcoming. The respondents have submitted before the learned Commissioner that there were frequent changes of the officials in the Afghan administration and therefore a new officer (other than the officer whose name was indicated to DRI) signing such certificate cannot be held against the importers. We find that the Commissioner has given careful consideration to the documents placed before him and come to the conclusion that substantial benefit of exemption cannot be denied merely on certain clerical mistakes or omission in the certificates produced. Even at this stage, no evidence has been produced to doubt the authenticity of the documents produced by the importers before the assessing authorities.

8. Under these circumstances, we do not fine any reason to interfere with the orders of the Commissioner. Appeals filed by the Department are, therefore, rejected.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan)
Member (Technical)

/Pant/