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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/57 /2006,83 & 244 /2006 - CU[DB] Date 20/07/2009

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

To :
MUKESH RATHORE
102, ENGINEERS ENCLAVE,
PITAMPURA, DELHI – 110 052

MUKESH RATHORE Appellant
Vs
COMMISSIONER OF CUSTOMS,ICD, TKD, NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/260-262/ 2009 CU[DB] dated 16.07.09 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
   COMMISSIONER OF CUSTOMS,
   ICD, TUGHLAKABAD, NEW DELHI
2. Adv. / Consult
   MR.PREM RANJAN KUMAR, ADV., LG-F1, E-13/29
   HARSH BHAWAN, CONNAUGHT PLACE, N.DELHI.
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. KISHORI LAL AGGARWAL
    A-3/14, MANAV APARTMENT,
    PASCHIM VIHAR, NEW DELHI.
19. M/S PUKHRAJ KACHRA,
    R/O DARSHAN HEIGHT, IST FLOOR,
    ROOM NO.106, JABHAWARI, MUMBAI.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO.II

C/Appeal Nos.57,83 & 244/2006-Cus(Br)

(Arising out of order in original No.96/05 dated 18.11.2005 passed by the Commissioner of Central Excise, New Delhi)

1. Shri Mukesh Rathore — Appellant
2. Shri Kishori Lal Aggarwal
3. Shri Pukhraj Kacchara

Vs

CCE, Tughlakabad — Respondent

Appeared for the Appellant : Shri Prem Ranjan Kumar Advocate
Ms. Deexa, Advocate
Appeared for the Respondent : Shri Vijay Kumar, SDR

Coram: **Hon'ble Mr.D.N. Panda, Judicial Member**
Hon'ble Mr. Rakesh Kumar, Technical Member

Date of Hearing : 1.7.09
Date of Pronouncement : 16-7-09

Final Order No. C/260-262/09 /2009

Per D.N. Panda:

All the three appeals were heard together due to common cause involved in these cases. The Appellant Mukesh Rathore is in Appeal Case No. 57/2006, Shri Kishori Lal Aggarwal is in Appeal Case No. 83/2006 and Shri Pukhraj Kacchara is in Appeal Case No. 244/2006. All the three appellants have faced equal penalty of Rs.10 lakhs each under Section 114 of the Customs Act, 1962. Grievance of all the three appellants was that they were imputed to charge in the show cause notice without their involvement in commitment of the offence alleged. It was alleged that all the appellants made export of impugned goods successfully to satisfy their ill will floating a firm called M/s Prime International, to Dubai. Further allegation was that the goods exported with the active involvement of these persons, were not cleared at Dubai and being unclaimed, those were taken possession by Customs Authorities of Dubai.

2.1 Acting upon intelligence, the DRI Bombay conducted an investigation and found that ready-made garments contained in Container Nos. NPIU-2003189, NPIU-2007712 and NPIU-2008616 were exported to Dubai by M/s Prima International with claim of draw back of duty. Investigation found that all the three appellants promoted the firm M/s Prime International to do export of the impugned goods in order to fraudulently claim the drawback of duty. These three appellants made ~~a dummy~~ an employee Shri Shivanand Shukla, a dummy Proprietor of that concern and through him the export was carried out by their active involvement. Investigation gathered both oral and documentary evidence showing that these three appellants were repeatedly involved in questionable exports.

2.2 The appellant Shri Kishori Lal Aggarwal in his statement admitted that some readymade garments were purchased from different suppliers at a very low price and no remittances was received against the exports. Similarly, Shri Mukesh Rathore in his statement dated 24.9.02 stated that he knows the appellant Shri Kishori Lal Aggarwal and the appellant Pukhraj while he had never done any business of export or import. The appellant Shri Pukhraj did not appear before DRI to give oral evidence.

2.3 Consequent upon admission of Shri Kishori Lal Aggarwal that he alongwith Mukesh Rathore and Pukhraj had defrauded revenue floating various bogus firms and claimed · duty drawback illegally, the appellant Shri Kishori Lal Aggarwal was arrested under Section 104 of the Customs Act. Shri Mukesh Kumar Rathore having got anticipatory bail from the Hon'ble High Court of Punjab & Haryana was directed to appear before DRI. But Shri Mukesh Kumar categorically stated in his statement that he knows Shri Kishorilal Aggrwal and Shri Pukhraj Kacchara. Although he appeared on 24.5.2002 before DRI, he failed to appear thereafter for record of his evidence. Investigation also gathered intelligence that Shri Pukhraj was wanted by DRI, Mumbai in an investigation relating to import where he was the prime offender.

2.4 Documentary evidence gathered by investigation, also revealed that M/s Prime International had availed duty draw back of Rs.1,37,09,842/- against export covered under 32 Draw back Shipping Bills. With the aforesaid background, all the three appellants were issued show cause notice for adjudication.

2.5 Appellant Shri Mukesh Kumar Rathore and Shri Kishorilal Aggarwal pleaded their innocence before the learned adjudicating authority submitting that they are stranger to the allegation. They also pleaded that they were not the promoters of the concern M/s Prime International for which the proceeding should not be initiated on the basis of statement recorded from Shri Shivanand Shukla. Record does not reveal appearance of Shri Pukhraj. Learned Commissioner made observations on conduct of all the three appellants at page 11 to 13 of the order in original and found that to be detrimental to the interest of law. That authority also found that M/s Prime International was bogus. That concern was floated taking Shivanand Shukla as Proprietor thereof and he was benamidar and that had exported 32 consignments to Dubai. The goods were over-valued without any evidence to support the declaration in the export document. The exported goods were not released by the consignee of Dubai. Those goods were finally auctioned by Dubai authorities. No export proceeding for the export came to India. He accordingly held that the drawback claim of Rs.1,37,09,842/- was inadmissible under law and he further held that all the three appellants having their inter-connection, nexus and involvement in the export were liable to penalty of Rs. 10 lakhs each.

2.6 Learned Counsel Shri Kant appearing for the appellant Shri Mukesh Rathore pleaded that in the entire Show Cause Notice, name of one Mukesh Budha has figured. There is no proof or any investigation made by the DRI to establish that the said Mukesh Budha was in fact the present appellant. When name of Mukesh Budha was uttered by the deponents, this appellant cannot be involved. He drew attention to page 25 of the paper book to place statement of Shri Daljit Singh Proprietor of M/s Cargo System. According to the statement, a person called Rakesh Kumar approached Shri Daljit Singh for arrangement of three containers for export of readymade garments to Dubai. This statement totally proved that the appellant Shri Mukesh Rathore was a stranger to the allegation without involving himself in any export. Therefore, there cannot be penalty against the appellant Shri Mukesh Rathore when Shri Mukesh Bhudha and Mukesh Rathore are different persons.

2.7 Learned Counsel Shri Prem Ranjan for the appellant Shri Kishorilal Aggarwal and learned Counsel Ms. Deexa appearing on behalf of Learned Counsel Shri Pradeep Jain for the appellant Shri Pukhraj Kacchara pleaded that they were never connected with any fraudulent export of readymade garments alleged by the show cause notice. Accordingly, penalty of Rs.10 lakhs each imposed on them is not sustainable.

3. Learned DR supported the order of adjudication.

4. Heard both the sides extensively and examined the record.

5. It is noticed that Shri Mukesh Rathore was arrested and Shri Kishorilal Aggarwal was on anticipatory bail for the offence they committed in relation to the questionable exports. In paragraph 11 of the order in original, statement of Shri Kishorilal Aggarwal has brought all the appellants showing involvement of all of them to defraud revenue. Neither they led any evidence as to proper export nor value thereof. There is no confusion about Mukesh Budha or Mukesh Rathore when the statement brought out intimate connection of the perpetration of the offence. This is established by evidence of Shri Shivanand Shukla who was brought to front by all the three appellants to make him proprietor of this bogus concern M/s Prime International. When arrest of Mukesh Rathore was made, at that time, nothing was whispered by him to suggest that he was not the person called Mukesh Budha and should not be arrested. The clear oral evidence through statement of Mukesh Rathore recorded on 24th May 2002 has

brought his connection with Shri Kishorilal Aggarwal and Pukhraj. Shri Kishorilal Aggarwal confirmed in his statement dated 31st October, 2001 that he used to look after the work of readymade garments with the knowledge of Shri Pukhraj and Shri Mukesh Rathore. Setting up of 30 bogus export firms to defraud revenue for claiming duty drawback amount of Rs. 3.5 crores was established and by no evidence that was rebutted. Statement of Shri R.K. Sachdeva brought Shri Kishorilal Aggarwal to fold of law. Role of Kishorilal Aggarwal in getting the business was established. One became witness against the other to establish their role by themselves.

6. Shri Kishorilal Agarwal in his statement dated 31.10.2001 clarified that Mukesh Budha is also known as Mukesh Kumar Rathore. Shri Mukesh Kumar Rathore in his statement established his acquaintance with Shri Kishorilal Aggarwal and Shri Pukhraj Kacchara and Shri Kishorilal Agarwal established his intimacy with Shri Mukesh Kumar Rathore as well as about business of readymade garments involving all the 3 (three) appellants. Therefore, there is no question of confusion relating to identity of Shri Mukesh Kumar Rathore (page 13 of the order in original). This is established from para 11 of the show cause notice also. Shri Kishorilal Aggarwal and Pukhraj have narrated various activities in para 11 of the show cause notice without ruling out role of each other including Mukesh Kumar Rathore and their involvement in the fraudulent Act. Also the appellant Mukesh Kumar Rathore has no evidence to show that he is different from Shri Mukesh Kumar Budha.

7. The oral evidence of Sh ivanand Shukla and Shri Kishorilal Aggarwal proved active involvement of Shri Pukhraj in the deal and defrauding revenue, exporting inferior quality of garments making over valuation. He established his case escaping from notice of Revenue and causing absence before DRI to lead evidence. Identity of Shri Pukhraj was established by Shri Dhanji Kachara and Vinod Khanna who were his brother and cousin respectively.

8 There was no evidence led by any of the appellants to prove that they were not intimately and willfully connected with each other to perpetuate fraudulent activity of dubious export of readymade garments making over-valuation. Evil design of all the three appellants made the Revenue to suffer. The exported goods not being cleared in Dubai, the appellants proved their malafides also and for all the reasons aforesaid they were bound to face the charge.

9. In view of the aforesaid observations and finding, all the three appellants do not deserve any consideration for exonerating them from penalty or even to reduce the penalty imposed in adjudication. Consequently, order passed by the learned adjudicating authority against these 3 (three) appellants imposing penalty of Rs. 10 lakhs on each of the appellants is confirmed and their appeals dismissed.

Pronounced in the open Court on 16/7/09

(D.N. Panda)
Judicial Member

(Rakesh Kumar)
Technical Member

MPS*