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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/340 /2006 - CU[DB] Date 31/07/2009
C/341/2006 –CU(DB)

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

To :
M/S. D.S.CARGO SERVICE
B-10/51, SECTOR-3, ROHINI, NEW DELHI
110085

M/S. D.S.CARGO SERVICE Appellant
Vs
COMMISSIONER OF CUSTOMS NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/323-324 2009 CU[DB] dated

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 NEW DELHI
AIR CARGO COMPLEX, NEW CUSTOM HOUSE, NEAR IGI AIRPORT, NEW DELHI
2. Adv. / Consult
MR.V.R.SETHI
401,SATYA CINEMA BUILDING, RANJEET NAGAR,DELHI-110008
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 Sh. Jay Prakash Qutab Vihar
B-268, Goela Diary
N Delhi

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-III

Date of hearing/decision: 25.6.2009

Customs Appeals No.340-341 of 2006

Arising out of the order in original No.10/HKM/2006 dated 1.3.2006 passed by the Commissioner of Customs, 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?	No
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

1. M/s D.S. Cargo Service .... Appellants
2. Shri Jay Prakash

Vs.

C.C., New Delhi .... Respondent

Appearance:

Shri Hemant Bajaj, Advocate for the appellants
Shri Fateh Singh, Authorized Departmental Representative (DR) for the Revenue

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

Final Oral Order No. C/323-324/09

Per P.K. Das:

These appeals are arising out of a common order and therefore, both are being taken up together for disposal.

2. M/s D.S. Cargo Service, a Customs House Agent and Shri Jay Prakash, an employee of CHA and 'G' Card holder filed these appeals against the penalty of Rs.1 lakh and Rs.5,000/- respectively.

3. The relevant facts of the case, in brief, are that M/s Bee Ess Expo Inc. (exporter) filed shipping bills for export and claimed drawback. On

investigation, it was found that there is a mis-declaration of the quantity, quality and value of sub-standard goods. The Commissioner denied the drawback benefit to the exporter and imposed penalties to the exporter and the appellant herein. He also confiscated the seized goods and imposed redemption fine thereon.

4. Learned Advocate on behalf of the appellants submits that the appellants are CHA and 'G' Card holder. Shri Jay Prakash signed the shipping bills on the basis of authorisation of the exporter. He further submits that the representative of the exporters attended in response to summons and also filed reply to show cause notice. He submits that there is no material available with the appellants had any knowledge of any improper export of goods. He relied upon the decision of the Tribunal in the case of Vetri Impex vs. C.C., Tuticorin – 2004 (172) ELT 347 (Tri-Chennai) and in the case of V. Esakia Pillai vs. C.C.., Chennai – 2001 (138) ELT 802 (Tri-Chennai).

5. Learned DR on behalf of the revenue reiterates the finding of the Commissioner. He submits that the export declaration should be signed by the exporters. He further submits that in the present case, 'G' card holder Shri Jay Prakash signed the shipping bills on instruction of CHA Shri Devender Singh without verifying the goods and therefore, the Commissioner has rightly imposed the penalties on them. He also submits that Shri Devender Singh in his statement stated that the exporters met with him at the Air Cargo unit in a routine manner. It is his submission that CHA had not taken proper step regarding genuineness of the exporter.

6. After hearing both sides and on perusal of the records, we find that the employee of the CHA signed the export shipping bills on the basis of authorisation of the exporter. It is noted that the representative of the exporter attended during the investigation and his statements were also recorded. It is seen that the exporter also attended the adjudication proceedings . The Commissioner observed that the CHA did not take usual precaution with regard to the value, quantity , quality of the export goods at the time of filing shipping bills.

7. We find that penalties were imposed under Section 114 of the Customs Act which provides that any person who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 113, or abets the doing or omission of such an act, shall be liable for penalty. In the present case, there is no material available on record that the appellants did anything or committed anything in connivance or with the knowledge of the exporter. So, in the facts and circumstances of the case, in our view, the imposition of penalties under Section 114 of the Act are not warranted. We are not concerned with the case of the exporter. In any event, there is no material available that the CHA and his employee had any knowledge on the quality, quantity and value of the export goods.

7. In view of the above discussions, we set aside the penalties on the appellants. The impugned order is modified to that extent as stated above.

8. The appeals are allowed.

(M. Veeraiyan)
Member (Technical)

(P.K.Das)
Member (Judicial)

scd/