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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/696 /2009-698 /2009 - CU[DB], C/S/3151-3153/09 Date 04/05/2010

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

To :
1. SMT. HIMANI SINGH W/O SHRI RAHUL SINGH PARTNER ,
2. M/S S.S. COLLECTION, GAJRAJ BHAWAN, KATGHAR PACHPERA, MORADABAD.

M/S S.S.COLLECTION, Appellant

Vs

C.C.E. MEERUT II STAY ORDER NO.C/53-55/10 Respondent

I am directed to transmit herewith a certified copy of Final order No. C/78-80/10 CU DB DATED 03.05.2010 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. MEERUT II, OPP. SAHEED PARK
   (NEAR ASHOK KI LAT) DELHI ROAD, MEERUT (UP)
2. Adv. / Consult MR.SAURABH MATHUR, ADVOCATE,
   C-15, 16, HARTHALA INDUSTRIAL AREA,
   KANTH ROAD, MORADABAD (U.P) 244001.
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. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9. M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
10. Taxmann Allied Service Pvt Ltd.. 59/32. New Rohtak Road. New Delhi - 110005
11. Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
12. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
13. Office Copy
14. Guard file
15. SHRI ANUSHESH SINGH
    S/O LATE SHRI VISHESH SINGH PARTNER
16. M/S S.S.COLLECTION, GAJRAJ BHAWAN,
    KATGHAR PACHPERA, MORADABAD, U.P.

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
BENCH-DB

Customs Stay Application No.3151 to 3153/09 in Customs Appeal No.C/696 to 698/09

[Arising out of Order-in-Original No.20/Comm./M-II/2009/507 dated 16.9.2009 passed by the Commissioner of Customs & Central Excise Meerut-II].

Date of Hearing:23.4.2010

Himani Singh & Others ...Appellants

Vs.

CC, Meerut ... Respondent

Present for the Appellant :Shri.S.K. Mathur Consultant
Present for the Respondent :Shri.S. Chand, DR

Coram:Hon'ble Dr.Chittaranjan Satapathy, Technical Member
Hon'ble Mr.D.N.Panda, Judicial Member

Final **ORDER NO.** C/78 to 80/10 **DATED:23.4.2010**
Stay Order No C/53-55/10
PER: D.N.PANDA

We have heard both sides. We find that in this case the Adjudicating Commissioner Shri A.K. Srivastava has reduced the declared value of the impugned goods to Rs.10,66,617/-. However, he has imposed a redemption fine of Rs.77,94,913/- after ordering confiscation of the impugned goods which were provisionally released earlier against a bank guarantee of Rs.25 Lakhs. After valuing the goods at a much lower value of Rs.10,66,617, it cannot be comprehended how the Adjudicating Commissioner can impose a redemption fine of Rs.77,94,913/- on the face of a clear provision of law under section 125 of the

Customs Act, 1962 that the redemption fine is not to exceed the market value of the goods. This not only shows total non-application of mind on the part of the Adjudicating Commissioner, but also demonstrates lack of appreciations of provisions of the law apart from carelessness.

2. Secondly, the appellants had claimed draw back benefit of Rs.8,46,774/- with reference to the declared higher value. The Adjudicating Commissioner has reduced the quantum of draw-back to Rs.10,666/- taking the reduced export value of Rs.10,66,617/- into account. Even if the appellants sought to defraud the Government preferring an inflated drawback claim of Rs.8,46,774/-, the penalty imposed should not have been disproportionate to the amount claimed. However, we find that the Adjudicating Commissioner has imposed a penalty of Rs.50 Lakhs on the first appellant and Rs.5 Lakhs each on the other 2 appellants totalling to Rs.60 Lakhs of penalty. There is no justifiable reason apparent from the order for such excessive penalty. Here again, it is noticeable that the Adjudicating Commissioner demonstrated non-application of mind and dealt the matter before him to the detriment of justice. Hence, we set aside the impugned order and remand the matter for fresh adjudication by a Commissioner who shall not cause peril to the interest of justice. We are of the considered view that the authority below who passed the impugned order has shaken public confidence for which our

observation in this regard may be brought to the notice of the Central Board of Excise and Customs by the ld. CDR.

3. Incidentally, before passing this order, we had allowed time and an opportunity to the Department and the Adjudicating Commissioner on the last date of hearing on 19.4.2010 to justify the impugned order. However, the ld. DR present today states that no response has been received from the Department and the Adjudicating Commissioner in this regard. Hence, we have recorded our observations as above.

4. In the absence of any justification in support of the impugned order, the appeal is allowed by way of remand in the above terms.

(DR.CHITTARANJAN SATAPATHY)
TECHNICAL MEMBER

(D.N.PANDA)
JUDICIAL MEMBER

Anita