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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/437 /2006 - CU[DB] Date 25/08/2010

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

To :
M/S. ISHAQUE SALES
1086, BARTAN MARKET, SADAR BAZAR, DELHI

M/S. ISHAQUE SALES Appellant

Vs

THE COMMISSIONER OF CUSTOMS Respondent

I am directed to transmit herewith a certified copy of **Final order No.** C/126/ **2010 CU[DB]** dated 12.08.10 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
   THE COMMISSIONER OF CUSTOMS
   ICD, TKD, NEW DELHI
2. Adv. / Consult ; Sh. AK Babbar, Adv
   367 Lawyers Chamber,
   High Court of Delhi , New Delhi - 03
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. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
14. Office Copy
15. Guard file

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: **12.8.2010**

Custom Appeal No. 437 of 2006

[Arising out of Order-in-Original No. 21/2006 dated 29.3.2006 passed by the Commissioner of Customs, ICD, Tughlakabad, New Delhi]

For approval and signature:

Hon'ble Dr. Chittaranjan Satapathy, Member (Technical)
Hon'ble Mr. D.N. Panda, 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.	Yes
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

M/s Ishaque Sales — Appellant

Vs.

CC, Delhi — Respondent

Appearance:

Appeared for the Appellant - Shri A.K. Babbar, Advocate
Appeared for the Respondent - Shri S.R. Meena, DR

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

Final Order No. C/126/10

Per Dr. Chittaranjan Satapathy :

Heard both sides.

2. Shri A.K. Babbar, ld. Advocate appearing for the appellants states that the original importers named in the IGM did not come forward to clear the impugned goods and hence the appellants cleared the same after the exporter was allowed by customs to sale it to the appellants. He further states that the impugned goods were tin plates second which was correctly declared in the Bill of Entry filed by the appellants and in this regard no mis-declaration has been found by the Custom authorities. The fact that the impugned goods were described as prime in the IGM cannot be held against the present importers who have come forward to clear the consignments when the original importers did not do so. As regards the charge of under valuation, the appellants obtained the impugned goods at a discounted price offered by the exporter but they have agreed to pay the duty on higher value determined by the Custom authorities. He prays for reduction in redemption fine and penalty imposed on the appellants.

3. Heard the ld. DR who states that the appellants are aware of the original mis-declaration in the IGM. He also states that the appellants have violated the DGFT notification which requires seconds and defective goods to be imported at designated ports. He further states that the value adopted by the adjudicating Commissioner is based on value of contemporaneous imports. He supports the impugned order in view of the above.

3. After hearing both sides, we find that the present appellants have not mis-declared the impugned goods in the Bill of Entry filed by them. Hence the charge of mis-declaration of the goods as regards its quality cannot be held against them. In regard to the specification relating to designated ports, we find that only tin plates waste/waste/tin plate mis-prints have been specified in this regard under the Import Policy. The specified goods do not cover tin plate seconds. Hence the appellants cannot be held to have violated the condition relating to import at specified ports and in any case they were not the original importers and we take note of the fact that they have only come forward to clear the goods already imported when the original importers did not clear the goods. Hence, in our view, the charge of violation of Section 111 (d) cannot be made against the appellants.

4. However, we find that the Adjudicating Commissioner has also confiscated the impugned goods for violation of Section 111 (m) which deals with mis-declaration of value. In the present case, the appellants had initially declared the lower value and had subsequently agreed to pay duty on the higher value determined by the Custom authorities. Hence the charge made against them under Section 111 (m) for confiscation of the impugned goods and for imposition of penalty under Section 112 is sustainable. At the same time, considering the entire facts and circumstances of the case including the fact that they were not the original importers, we reduce the redemption fine to Rs. 1.00 lakh (Rupees One lakh) and the penalty

to Rs.50,000/- (Rupees Fifty Thousand only). The appeal is partly allowed in the above terms.

(Dictated & pronounced in open Court)

(Dr. Chittaranjan Satapathy)
Member (Technical)

(D.N. Panda)
Member (Judicial)

RM