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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/334 /2006 - CU[DB] Date 29/09/2010

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

To :
M/S GRAFTSMAN
12/12-45, SARAI KHAJOOR, BARA SHAHSAFA,
MORADABAD, U.P.

M/S GRAFTSMAN Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/139/ 2010 CU[DB]** dated 27.09.2010 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. (ICD) NEW DELHI
   ICD, TUGHLAKABAD, NEW DELHI
   110020
2. Adv. / Consult
   MR.A.P.MATHUR
   167,TAGORE TOWN, ALLAHABAD,UP
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.II, R.K. PURAM, NEW DELHI-110066.
Division Bench

Customs Appeal No.334 of 2006

(Arising out of Order-in-Original No.15/2006 dt.21.2.06 passed by the Commissioner of Customs, New Delhi)

**Date of Hearing/Decision: 23.09.2010**

For approval and signature:

**Hon'ble Mr.M.V.Ravindran, Member(Judicial)**
**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? | 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.Craftsman Appellant

Vs.

CC, New Delhi Respondent

Present for the Appellant : Shri A.P.Mathur, Advocate
Present for the Respondent: Shri I.Baig, DR

**Coram: Hon'ble Mr.M.V.Ravindran, Member(Judicial)**
**Hon'ble Mr.M.Veeraiyan, Member (Technical)**

Final **ORDER No.** C/139/10

**PER: M.V.RAVINDRAN**

This appeal is directed against the Order in Original No. No.15/2006 dt.21.2.2006.

2. The relevant facts that arise for consideration that the appellants herein had imported raw materials, namely, brass scarp against advance licence dated 11.3.98. While procuring the brass

scrap and clearing the same without payment of duty, the appellants contracted for export obligation for export of brass artwares as per condition laid down in Notification No.30/97-Cus dated 1.4.97. The lower authorities came to conclusion that the appellants had not fulfilled the export obligation in terms of quantity of the goods to be cleared under the export licence, issued a show cause notice to the appellants demanding the duty foregone by the Revenue on the quantity of brass scrap unutilized for the purpose of export obligation. The appellants contested the show cause notice on various grounds and also on the ground that they have completed the value wise export obligation. After following the principles of natural justice, the adjudicating authority confirmed the demand. Aggrieved against the said Order in Original, the appellants preferred an appeal before the Tribunal and the Tribunal vide its Final Order No.A/249/2001-NB dated 30.3.2001 remanded the case for de novo adjudication giving some directions to the adjudicating authority. Consequent to the directions of the Tribunal, the adjudicating authority granted personal hearing to the appellants and after considering the submissions made by the appellants, came to the conclusion that the appellants had failed to fulfil the conditions No.VI of the Notification No.30/97-Cus dated 1.4.97 and he confirmed the customs duty of Rs.20,79,835.10 alongwith interest @ 24% per annum from the date of clearance till the date of payment. He also ordered for appropriation of amount of Rs.6 lakhs which was encashed by the lower authorities as bank guarantee given by the appellants. He also imposed penalty ofRs.4 lakhs under Section 112 of Customs Act, 1962. Aggrieved by the said order, the appellants before us.

3. Learned Counsel, Shri A.P.Mathur appearing on behalf of the appellants submits that they are not disputing the duty liability which has been confirmed by the adjudicating authority. He submits that the appellants are not disputing the interest liability payable by them. He submits that lenient view may be taken on the penalty imposed by the adjudicating authority considering that the appellants had exported the goods in excess of export obligation by 43 lakhs.

4. The Departmental Representative on the other hand reiterates the finding of the adjudicating authority.

5. We have considered the submissions at length by both sides and perused the records.

6. The issue involved in this case is whether the appellants are liable to pay the amount of duty confirmed by the adjudicating authority on the ground that they have not fulfilled the export obligation as envisaged under Notification No.30/97-Cus dated 1.4.97 and whether they are liable to pay penalty.

7. Since learned Counsel on instructions ~~has~~ submitted that they are not disputing the duty liability and interest thereof, we find that the order in original to the extent needs to be upheld and we do so.

8. As regards the penalty imposed, we find that the adjudicating authority has clearly recorded in the Order in Original that the appellants had in fact exported the goods in excess of export obligation in terms of value. At the same time, we also find that the adjudicating authority ~~though~~ also held that the export obligation falling short in terms of quantity. There is no allegation in the show cause notice or finding in the order in original that the goods imported for

fulfilling the export obligation had been diverted for some other purposes. In the absence of any evidence that the appellants had diverted duty free import for any other purposes for fulfilling the export obligation, we find that the lenient view needs to be taken on the penalty imposed and it is also noted that there is no dispute as regards export obligation fulfilled by the appellants in terms of value inasmuch as they have exceeded the export value obligation by Rs.43 lakhs.

9. In view of the facts and circumstances of the case, we find that the penalty of Rs.4 lakhs imposed by the adjudicating authority under Section 112 of Customs Act, 1962 seems to be excessive. In the interest justice, we reduce the penalty to Rs.1 lakhs only.

10. Subject to the above modification, the appeal is disposed of.

**(M.VEERAIYAN)**
**MEMBER (TECHNICAL)**

**(M.V.RAVINDRAN)**
**MEMBER (JUDICIAL)**

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