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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

SINGLE MEMBER APPEAL BRANCH

Appeal No. C/164 /2008 – SM [BR] Date 19/11/2009

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

To :
C.C. (PREVENTIVE) AMRITSAR
CUSTOM HOUSE, CENTRAL REVENUE BUILDING,
THE MALL, AMRITSAR 143001.

C.C. (PREVENTIVE) AMRITSAR — Appellant

Vs

M/S RAGHAV INDUSTRIES — Respondent

I am directed to transmit herewith a certified copy of **Final order No**. 1447 / 2009 –SM[BR] dated 12.11.2009 passed by the Tribunal under Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax

Assistant Registrar
(SM Appeal Branch)

Copy to :
1. Respondent
M/S RAGHAV INDUSTRIES
G.T.ROAD, MILLER GANJ,LUDHIANA
2. Adv. / Consult
NONE;----------------------

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

Assistant Registrar
(SM Appeal Branch)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R. K. Puram, New Delhi
COURT-III

Date of hearing/decision: 12.11.2009

Custom Appeal No. 164 of 2008-SM

[Arising out of order-in-Appeal No. 155/Cus/Appl/Ldh/2007 dated 5.12.2007 passed by the Commissioner (Appeals), Customs & Central Excise, Chandigarh]

For approval and signature:

Hon'ble Shri M. Veeraiyan, Technical Member

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

CC, Amritsar — Appellant

Vs.

M/s Raghav Industries — Respondent

Appearance:
Appeared for the Appellant – Shri S.N. Srivastava, SDR

Appeared for the Respondent- None

Coram: Hon'ble Shri M. Veeraiyan, Technical Member

Final Order No. 1447/2009 SM (BR)

Per: M. Veeraiyan:

This is an Appeal by the Department against the order of the Commissioner (Appeals) by which the redemption fine reduced from

Rs.75,000/- to Rs.15,000/- and penalty from Rs.75,000/- to Rs.5,000/-, thus modifying the order of the original Authority.

2. None appears for the Respondent. Heard the ld. DR.

3. It is noticed that the Appellant imported five containers of goods declared as Heavy Melting Scrap totally weighing 117.890 M.T. valued at Rs.13,55,904/-. On examination, it was held that two of the containers contained Rail Line weighing 48.750 M.T. and valued at Rs.6,72,830/- and that they were classifiable under a different Heading viz. 73021010 attracting higher rate of duty and accordingly, the goods were held to be mis-declared and were confiscated by the original Authority but allowing to redeem the same on payment of fine of Rs.75,000/-. The original Authority also imposed penalty of Rs.75,000/-. In the Appeal before the Commissioner (Appeals), the party submitted that the Rail Line imported by them cannot be used as such; that they were correctly declared as HMS as supported by pre-inspection certificate given from the country of export; that they have incurred heavy expenses including demurrage due to delay in clearance. The Commissioner, while upholding the confiscation reduced the redemption fine from Rs.75,000/- to Rs.15,000/- and the penalty from Rs.75,000/- to Rs.5,000/-.

4. Ld. DR reiterates the grounds of Appeal and seeks restoration of the order of the original Authority.

5. I have carefully considered the submissions of ld. SDR and perused the records. At the outset, it is noticed that the Commissioner has upheld the confiscation. However, using the discretionary powers reduced the redemption fine and penalty. The discretion has not been used arbitrarily. The Commissioner (Appeals) has taken into account the various relevant factors including expenses, godown charges, profit margin and reduced the redemption fine and penalty. No valid grounds have been adduced to interfere with the order of the Commissioner (Appeals) by which the confiscation as well as penalty stands upheld.

6. The Appeal by the department is rejected.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
TECHNICAL MEMBER

RM