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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/169 /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**. 1448 / 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. 169 of 2008-SM

[Arising out of order-in-Appeal No. 156/CUS/APPL/LDH/2007 dated 6.12.2007 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. 1448/2009 SM(BR)

Per: M. Veeraiyan:

This is an Appeal by the Department against the order of the

Commissioner (Appeals) by which the redemption fine of Rs.4.00 lakhs was reduced to Rs.40,000/- and penalty of Rs.1.00 was reduced to Rs.15,000/-, thus modifying the order of the original Authority.

2. None appears for the Respondent. Heard ld. SDR and perused the record.

3. The relevant facts, in brief, are that the Respondent imported in January 2005 consignments in eight containers declaring the same as heavy melting scrap. The import was supported by a certificate that the materials was of Iran origin and free from war material, nuclear waste, explosives and radio active elements. On examination of the cargo, it was noticed that 308 pieces of used war materials/explosives were found from these consignments which were segregated from the scrap and sealed in a separate container. Heavy melting scrap other than the segregated war materials were released provisionally to the Respondent. The original Authority absolute ordered confiscation under Section 111 (d) of 308 pieces of war materials/explosives and also held liable to confiscation of Heavy Melting Scrap and imposed Rs.4.00 lakhs fine in lieu of confiscation. He also imposed penalty of Rs.1.00 lakh on the Respondent. Commissioner (Appeals) upheld the order of absolute confiscation of 308 pieces of war material. He also upheld the order of confiscation of heavy melting scrap and reduced the fine from 4.00 lakhs to Rs.40.000/- and the penalty reduced from Rs.1.00 lakh to Rs.15,000/-.

4. Ld. DR reiterates the findings and reasoning given by the Original Authority and the grounds of Appeal.

5. I have carefully considered the submissions and perused the record. It is a case where the Respondent imported heavy melting scrap, supported by a certificate issued from the consignee that the material was of Iran origin and the imported consignment was free from war materials etc. However, some damaged, used and rusted bomb shells was found in addition to the heavy melting scrap and the said offending materials were segregated and the balance materials were released provisionally. The offending war materials stand absolutely confiscated. The Heavy melting scrap which have been provisionally released are not prohibited items. It is a case where objectionable materials were found among the heavy melting scrap. The heavy melting scrap stands confiscated under Section 111(d) of the Customs Act. The Commissioner (Appeals) has upheld the confiscation of heavy melting scrap and also held that the importer was liable to penalty. He has also held that there was no mens rea on the part of the importer in relation to the import of the consignment. He has reduced the redemption fine taking into consideration that the war materials found the consignment of HMS scrap were damaged, used and rusted bomb shells and accordingly not usable as such. The redemption fine relates to HMS which is not prohibited. In view of the clear finding of the Commissioner (Appeals) that there was no evidence to suggest mens rea, the

leniency shown by the Commissioner by reducing the redemption fine and penalty cannot be treated as unreasonable.

6. There are no valid reasons adduced to interfere with the order of the Commissioner (Appeals).

7. Appeal by the Department is, therefore, rejected.

(Dictated & pronounced in open Court)

(M. VEERAIYAN)
TECHNICAL MEMBER

RM