REGISTERED / AD

TELEGRAM: CEGCANAL
Website :- www.cestat.gov.in

Email : delhi@cestat.gov.in

CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 15/10/2009

Appeal No. C/453 /2008 – SM[BR]

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

To :
M/S JAIN WOOL CORPORATION — Appellant
44/4 JAIN STREET, PANIPAT , HARYANA — Vs
M/S JAIN WOOL CORPORATION — Respondent

C.C.E. NOIDA

I am directed to transmit herewith a certified copy of **Final order No**. 1253 / 2009 –SM[BR] dated 6.8.2009 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
   C.C.E. NOIDA
   C-56/42, SECTOR-62, NOIDA-201307
2. Adv. / Consult
   MR.MOHAN LAL, ADV.
   B-67, FLATTED FACTIRES COMPLEX, OKHALA PHASE-III, DELHI-110020

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 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
16 Office Copy
17 Guard file

Assistant Regist
(SM Appeal Bra

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Customs Appeal No.453 of 2008-SM (BR)

[Arising out of Order-in-Appeal No.01/Comm/2008 dated 27.02.2008 passed by the Commissioner of Customs, ICD, Dadri (U.P.)]

Date of Hearing/ Decision: 06.08.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether Their Lordships wish to see the fair copy of the Order? :
4. Whether Order is to be circulated to the Departmental authorities? :

No

Yes

M/s.Jain Wool Corporation ...Appellants

(Rep. by Shri A. Das, Consultant)

Vs.

CC, Noida ....Respondent

(Rep. by Shri R.K. Saini, SDR)

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 1253/2009 SM (Br)/Dated:06.08.2009

Per P.K. Das:

The appellant filed this appeal against imposition of penalty of Rs.1,40,000/- under Section 112 of the Customs Act, 1962.

2. Ld. Advocate submits that they received a show cause notice dated 11.01.2008, proposing to confiscate the imported goods viz. Worn Clothing under Section 111 (d) of the Act and to impose penalty under Section 112 of the Act. He submits that it appears from the show cause notice that a consignment was imported declaring "pre-mutilated old mixed synthetic hosiery rags", which were transshipped to ICD, Dadri from JNPT Nhava Sheva, Mumbai vide TP No.27121 dated 16.07.2005 issued against gateway IGM No.12546 dated 14.07.2005. On examination, it was found that the goods were not "pre-mutilated rags" but "worn clothing" restricted item can not be imported without import licence. It appears from the show cause notice that the appellant's name was mentioned in the Transshipment Permit. The ld. Advocate submits that thy have not placed the order for importation of the said consignment. They have no connection with the imported goods and, therefore, imposition of penalty is not warranted. He also submits that that they are not claiming the goods and, therefore, they have no concern with confiscation and imposition of redemption fine on the goods.

3. Ld. SDR reiterates the findings of the Commissioner. He submits that the goods were imported in the month of July, 2005. He also submits that they are the custodian of the goods as revealed from the Transshipment Permit. He also submits that onus lies with the appellant to establish that they are not the owner of the goods. He further submits

that in reply to the show cause notice the appellant merely denied the allegation and they have not come with sufficient proof.

4. After hearing both the sides and on perusal of the records, I find from the impugned order that the Transshipment Permit was issued in the name of the appellant. The Commissioner observed that their name was mentioned in the Transshipment Permit that they are the custodian of the goods. It was observed by the Commissioner that the real nature of the goods i.e. being worn clothing instead of woolen/hosiery rags, is established by the examination of the goods conducted jointly by the customs department and the custodian viz. CONCOR, therefore, the appellant avoided to release the goods.

5. On perusal of the records, I find that the Transshipment Permit was issued in the month of July, 2005 and show cause notice was issued on 11.01.2008. It is noted that the appellant had not filed Bill of Entry. The appellant in their reply to the show cause notice categorically denied the ownership of the goods. The Commissioner imposed penalty on the basis that the appellant's name was mentioned in the Transshipment Permit and, therefore, they are the owner of the goods. On the other hand, the appellant claimed that they have not imported the goods. I find that the Department had not made enquiry/investigation about the custodian of the goods. In my view, penalty cannot be imposed on the basis of mere assumption and presumption. So, imposition of penalty is not sustainable.

6. In view of the above discussions, I find that the appellant is not claiming the imported goods. So, the penalty imposed of Rs.1,40,000/- on the appellant is set aside. The appeal filed by the appellant is allowed.

Order dictated & pronounced in open court on 6.8.2009.

(P.K. Das)
Member (Judicial)

Ckp.