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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/517 /2006 – SM[BR] Date **02/02/2011**

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

To :
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA)

C.C.E. DELHI III Appellant

Vs

M/S ESSEL MARMO PVT. LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No. 92 / 2011- SM[BR] dated 24.12.2010** 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 ESSEL MARMO PVT. LTD.
A-40-OKHALA INDUSTRIAL AREA PHASE-I,
NEW DELHI
2. Adv. / Consult
NONE:----------------
3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New
6. M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi -
7. Company Law Institute of India Pvt Ltd.,No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
8. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017
9. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi -
10. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
11. LAWCRUX Advisors Pvt Ltd, LAW House,1-8,Sector - 10, Faridabad 121003 (Haryana)
12. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
13. Office Copy
14. Guard file

Assistant Registrar
(SM Appeal Branch)

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

Date of Hearing/decision: 24.12.2010

For approval and signature:

Hon'ble Shri Rakesh Kumar, 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.	
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?	

Custom Appeals No. 517 of 2006-SM

[Arising out of Order-in-Appeal No.124/GRM/GGN/06 dated 17.04.2006 passed by the Commissioner (Appeals) Delhi].

CCE, Delhi-III ...Appellants

Vs.

M/s Essel Marmo Pvt. Limited ...Respondent

Appearance:

Rep. by Shri R. K. Gupta, S DR for the respondent.

None for the respondent.

CORAM: Hon'ble Shri Rakesh Kumar, Member (Technical)

Final Order No....92/2011 SM (BR)...../Dated: .2010

Per Rakesh Kumar:

The facts leading to this appeal by the department are, in brief, as under:-

1.1 The respondent imported a consignment with declared quantity of 569.13 sq. mts. of polished marble slabs and filed Bill of Entry No. 22 dated 20.01.2006. The goods were declared as polished marble slabs under tariff heading 68022110 of the Customs Tariff for clearance.

1.2. On examination of the goods in presence of the importer's representative. it was found that only six marble slabs placed on the top were polished and rest of the slabs i.e. 215 placed below the polished lab slabs were unpolished. The total quantity of polished marble slabs was found to be 794.71 sq. mts. and total quantity of polished slab as well as unpolished slabs was 794.71 as declared against the declared quantity of 569.13 sq. mts. While the polished slabs could be imported under OGL, the import of unpolished slab was restricted and same required import license. Thus, it appeared that the respondent's intention was for import restricted items unpolished marble slabs and evade the duty misdeclaring the description as well as quantity.

1.3 After issue of show cause notice, the matter was adjudicated by the Assistant Commissioner who vide his order-in-original dated 24.3.2006 ordered for confiscation of the goods under Section 111(d), 111(1), 111(m) and 111(o) of the Customs Act, 1962. However, he allowed the redemption of the goods on payment of redemption fine of Rs. 4,50,000/- in addition to payment of duty. Besides this, he imposed penalty of Rs. 1,50,000/- on the respondent under Section 112(a) of the Customs Act, 1962 and imposed further penalty of Rs. 2,00,000/- under Section 112(a) of the Customs Act, 1962 on the CHA through whom the bill of entry has been filed. The quantum of redemption fine of Rs. 4,50,000/- had been determined by taking the market price of the unpolished slabs as Rs. 170/- per sq. ft. and on this basis the total profit margin in respect of this confiscation would be Rs. 4,49,973/-. The respondent filed the appeal before the Commissioner (Appeals) who vide order-in-original dated 17.4.2006 upheld the order of confiscation and imposition of penalty, but he reduced the redemption fine from Rs.4,50,000/- to Rs. 70,000/- and penalty from Rs. 1,50,000/- to Rs. 30,000/-. While reducing the redemption fine and penalty, the Commissioner (Appeals) observed that the imported goods are still lying with the Department and heavy demurrage will be payable for the release of the same. It is against this order of the Commissioner (Appeals) therefore revenue has filed this appeal challenging the reduction of the quantum of redemption fine and penalty.

2. Though a notice for hearing had been issued to the respondent well in time but neither the representative for the respondent turned up for hearing nor there is any message from them requesting for adjournment. I find that on the earlier occasion also when this matter had been listed, the same had got adjourned. In view of this in terms of Rule 21 of CEGAT Procedure Rule, 1982 this matter, in so far as respondent are concerned is being decided ex-parte.

3. Shri R.K. Gupta, learned DR while reiterating the grounds of appeal pleaded that when the Commissioner (Appeals) has upheld the order of the original adjudicating authority that the description and quantity of these goods have been deliberately mis-declared, there is no justification for reduction of quantum of redemption fine and penalty just because the goods have incurred heavy demurrage.

4. I have carefully considered the submissions of the learned DR. In this case, there is no dispute about the fact that there is mis-declaration of description as well as quantity of the goods with intention to import restricted goods without import licence and also evade the duty. The quantum of redemption fine imposed by the original adjudicating authority have been determined on the basis of the profit margin which, in turn, is based on the market price of the imported goods and in this regard detailed calculation has been given in the order-in-original. The Commissioner (Appeals) in his order has upheld the finding of the original adjudicating authority with regard to misdeclaration of description as well as quantity of the goods and on this basis upheld the order of the original adjudicating authority. However, for reducing the penalty on the redemption fine ~~and~~ other than ~~the~~ mentioning that the goods have incurred heavy demurrage, no reason has been mentioned. In my view, when the goods have been deliberately imported in contravention of the import trade control provisions and also by misdeclaring the description and quantity, the redemption fine cannot be reduced, even if the same have incurred heavy demurrage. It is settled law that the quantum of redemption fine should be sufficiently high to mop up the entire margin of profit. In view of this, I am of the view that the impugned order substantially reducing the quantum of redemption find and penalty is not correct, and the same is set aside. In this regard the order is original is restored. The appeal is allowed.

(Rakesh Kumar)
Member (Technical)

Ckp.