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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 / 349 – 356 / 2009 –SM[BR] Date 12/04/2010

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
SH. GUNMIT SINGH PARTNER, — Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 407 – 414 / 2010 –SM[BR] dated 6.4.2010 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
   SH. GUNMIT SINGH PARTNER,
   M/S CHUG EXPORTS,C-17, SPORTS & SURGICAL COMPLEX, JALANDHAR.
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)

3. Shri Gurdip Singh Partner,
M/S CHUGH EXPORTS
C-17, SPORTS AND SURGICAL COMPLEX, JALANDHAR.

3. SHRI GURDIP SINGH PARTNER,
M/S CHUG EXPORTS, C-17, SPORTS & SURGICAL COMPLEX,
JALANDHAR.

4. SHRI GUNMIT SINGH PARTNER,
M/S CHUG EXPORTS,C-17, SPORTS & SURGICAL COMPLEX,
JALANDHAR.

5. SHRI. GUNMIT SINGH PARTNER,
M/S CHUG EXPORTS, C-17, SPORTS &SURGICAL COMPLEX
JALANDHAR

6. SHRI DALJIT SINGH PARTNER,
M/S CHUG EXPORTS, C-17, SPORTS & SURGICAL COMPLEX,
JALANDHAR.

7. SHRI DALJIT SINGH PARTNER,
M/S CHUG EXPORTS,C-17, SPORTS & SURGICAL COMPLEX,
JALANDHAR.

8. M/S GURDIP SINGH PARTNER,
C-17.SPORTS AND SURGICAL COMPLEX, JALANDHAR.

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Customs Appeal No. 349-356 of 2009-SM(BR)

[Arising out of Order-in-Original No. 2-12/Cus/Ldh/2009 dated 13.2.2009 passed by the Commissioner of Customs & Central Excise, Chandigarh]

For approval and signature:

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

C.C.E., Chandigarh ... Appellants

Vs.

Shri Gunmit Singh .... Respondents
M/s. Chugh Exports
Shri Gurdip Singh
Shri Daljit Singh

Appearance:

Shri I. Baig, SDR for the Appellants
None for the Respondent

Date of Hearing/decision : 6.4.2010

ORAL ORDER NO. 407 - 414/2010 SM(BR)

Per M. Veeraiyan:

All these appeals by the Department arise out of common order-in-appeal of the Commissioner (Appeals) No. 2-12/Cus/Ldh/2009 dated 13.2.2009.

2. None appeared for the respondents in spite of notice. Heard the learned SDR and perused the records.

3. The relevant facts, in brief, are that M/s. Chug Exports, a partnership concern with Shri Gurdip Singh, Shri Gunmit Singh and Shri Daljit Singh as partners made exports of "Crank Shaft for high speed compressor" but declared the same as "Timing Shaft for Mercedes Truck". The DEPB rates applicable for Crank Shaft was 14% whereas DEPB rates for Timing Shaft for Mercedes Truck was 22%. On the basis of exports made, the DEPB scrips were obtained at higher rates and the same were transferred to different importers who utilised the same for duty free imports. Three importer specific orders were issued and by the said orders Shri Gunmit Singh has been imposed penalties of Rs. 70,000/-, Rs.85,000/- and Rs.12,000/-; Shri Gurdip Singh has been imposed penalties of Rs. 5,000/- , Rs.10,000/- and Rs.10,000/-; Shri Daljit Singh was imposed penalties of Rs.10,000/- and Rs.10,000/- in two cases. There were penalties on the partnership firm also. All these parties filed appeals before the Commissioner (Appeals). Commissioner (Appeals) while upholding the penalties on M/s. Chug Exports in all these three cases, set aside the separate penalties imposed on each of the partners as above. Hence the department has preferred these appeals.

4. Learned SDR submits that it was a clear export fraud to obtain higher DEPB benefits. The partnership firm has to be treated differently from the proprietary concern. Concept of no separate penalty on the proprietor and proprietary concern cannot be applied to partnership firm and its partners. He relies on the decision of the Hon'ble Supreme Court in the case of Prakash Metal Works vs. CCE, Ahmedabad reported in 2007 (216) ELT 660 (SC) wherein the Hon'ble Supreme Court upheld the order of the Tribunal imposing penalties on the partnership firm and the partners of the firm.

5. Learned SDR also submitted that M/s. Chug Exports have filed appeal against the penalties imposed by Commissioner (Appeals) and the said appeals were dismissed for non-compliance of stay order of the Tribunal.

6. I have carefully considered the submissions from both the sides and perused the records. The Commissioner (Appeals) has upheld the order of the original authority in so far as the finding that there was mis-declaration of the exported goods with a view to claim higher DEPB benefit and also imposing penalties on the exporting firm namely, M/s. Chugh Exports. Commissioner (Appeals) however, held that there was no justification for imposition of separate penaltieson the partners of the exporting firm. From the perusal of the records, with the help of learned SDR, it is evident that Shri Gunmit Singh was the partner who was looking after the day today activities of M/s. Chugh Exports. This is evident from his statement wherein he described Shri Gurdip Singh and Shri Daljit Singh as sleeping partners. The statement of Shri Daljit Singh and Shri Gurdip Singh also indicate that they were not actively associated with the day-today activities of the exporting firm. It is also noticed that the documents namely shipping

bills and related invoices and packaging list resumed from Oriental Bank of Commerce, Jallandhar revealed that the exported goods were declared in these documents as “Crank Shaft for high speed compressor" whereas the documents resumed from CFS Ludhiana and from the office of Directorate General of Foreign Trade described the exported goods as “ Timing Shaft for Mercedes Truck”. Shri Gunmit Singh in his statement dated 13.11.02 has admitted that though they did not export the item ‘Timing Shaft for Mercedes Truck’, they have claimed DEPB rate at 22%. In view of the above, the penalties on Shri Gunmit Singh as imposed by the original authority are justified. However, in the absence of any evidence indicating knowledge or intention on the part of Shri Daljit Singh and Shri Gurdip Singh the imposition of penalties on them are not justified.

7. In view of the above, the appeals are disposed of in the following terms:

a) The departmental appeals No. C/349/09, C/352/09 and C/353/09 are allowed by setting aside the order of the Commissioner (Appeals) in so far as they relate to Shri Gunmit Singh and restoring the penalties imposed by the orders of the original authority.

b) The other appeals of the department Appeal Nos. C/ 350/09, C/351/09, C/354/09, C/355/09 and C/356/09 seeking restoration of penalties on Shri Gurdip Singh and Shri Daljit Singh are rejected.

(M. Veeraiyan)
Member(Technical)

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