

GRAM : CEGCANAL

REGISTERED/A.D

THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL,

West Block No. 2, R.K. Puram, New Delhi - 110066.

BENCH NB(SM)

Appeal No. C/449/00-NB(SM)

Dated: 15/3/2001

CEGAT  
NEW DELHI  
To,

M/s Jiva,  
4, Seindia House  
~~Connaught~~ Connaught place New Delhi.

In the matter of :

M/s Jiva

Appellant

vs.

CC (Air cargo) New Delhi

Respondent

I am directed to transmit herewith a certified copy of Final Order No. A/348/01-NB(SM)  
Dated: 28-2-2001 passed by the Tribunal under Section 35-C(1) of Central Excise  
& Salt Act, 1944/Section 129 (B) of the Customs, Act, 1962.

Copy to :

Asstt. Registrar  
NB(SM)

1. CC (Air cargo) New Delhi
2. ECE/CC/(Appeal) New Delhi
3. Chief Commissioner of Central Excise / Customs. New Delhi
4. Adv. / Consult. Shri Balbir Singh, Adv.,  
H.No. 3015, Sector-27-D,  
Chandigarh
5. S.D.R
6. JCDR
7. Bar Association, CEGAT, New Delhi
8. Library, CEGAT, New Delhi
9. Director (Review), C.B.E.C. North Block, New Delhi
10. Guard File.
11. M/s Deeparchic Publications, M-93, Marg-46, Saket, New Delhi.
12. M/s Centax Publications (P) Ltd., 1512-E, Bhisim Pitamah Marg, opp. Sachdeva P.T. College of  
Defence Colony, New Delhi-110003
13. ~~M/s Lex Site Com. Ltd., Mumbai~~
14. Office Copy
15. M/s Cen - cus publication.
16. M/s Law Infotech Resources (P) Ltd.

Asstt. Registrar

In the Custom, Excise & Gold (Control) Appellate Tribunal  
New Delhi

APPEAL NO. C/449/2000/NB/SM OF 19 (.....)

ARISING OUT OF ORDER IN ORIGINAL/APPEAL NO.

4/2000..dated..13.9.2000.....DATED.....

PASSED BY.....Commissioner of  
Customs, New Delhi

Date of decision.....9.2.2001

.....M/S. JIVA.....APPELLANT (S)

Represented by Sh./Smt. Balbir Singh, Adv

VERSUS

.....C.C.G. New Delhi.....RESPONDENT (S)

Represented by Sh./Smt. A.K. Jain, JDR

CORAM : SHRI K.K. BHATIA, MEMBER (T)

To be referred to the Reporter or not ?  
FINAL ORDER NO. A/348/01/NB (G/M)

Per.....SHRI K.K. BHATIA, MEMBER..(T).

The brief facts of the case are that the appellants filed a shipping bill for export of 1000 yards of fabric M/O of one OR M.M./M FIL yarn through M/s K.Padmanabhan, (CHA). The rate of fabric was declared at U.S. \$ 40 per yard, both on the S/Bill and the invoice No.42 dated 21.7.2000. On examination, a doubt arose regarding valuation and hence the samples were drawn from the consignment.

2. The exporters, after the shipment had gone, submitted before the customs authority that there was a mistake in filing papers and the correct rate was US \$ 4 per yard. Consequently the proceedings were initiated against the appellants and the Commissioner of Customs, Air Cargo, Custom House, New Delhi passed an order-in-original dated 13.9.2000, operative portion of which is reproduced below:

"I accordingly order confiscation of 1000 yards of fabric attempted to be exported in contravention of the provisions of Section 111(d) of the Customs Act, 1962. However, since the goods have already been exported, I levy a fine of Rs.1,00,000/- (Rupees one lakh only) in lieu of confiscation. I also impose upon M/s JIVA, a penalty of Rs. 60,000/- (Rupees Sixty thousand only) under Section 114(i) of the Customs Act, 1962".

3. The present appeal is against the above order of Commissioner of Customs. I have heard Shri Balbir Singh, Adv. for the appellants and Shri A.K. Jain JDR for the respondents. At the very outset the Ld. Adv. submits that the above order has been passed without putting the appellants on notice or affording them an opportunity for personal hearing. On specific query the Ld. Adv. for the appellants stated that the appellants at no stage of the proceedings had waived the issue of the show cause notice. Ld. JDR for the respondents in view of this fact very fairly submits that he would have no objection if the matter is remanded for de novo consideration for passing an order after observing the principles of natural justice.

4. In view of the above uncontroverted facts, the order appealed against is set aside. Indeed the Commissioner could not have penalised the appellants without issuing them a notice and giving them a reasonable opportunity to state their case before him. It would be open to the department to put the party on notice and conduct the proceedings in accordance with the well settled principles of natural justice.

5. The appeal is disposed off in the above terms.

Announced and dictated in the court.

(K.K. BHATIA)

MEMBER(T)

PW

28.2.2001