15

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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066

CUSTOMS APPEAL BRANCH

Appeal No. C/16 /2010 - CU[DB] Date **15/03/2011**

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

To : M/S ACHIEVER INTERNATIONAL (THROUGH
PARTNER, VINEET GUPTA)
C-12, G.F., SHAKTI NAGAR EXTENSION
DELHI-110052.

M/S ACHIEVER INTERNATIONAL (THROUGH PARTNER, VINEET GUPTA) Appellant

Vs

C.C.(PREVENTIVE) Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/115/ 2011 CU[DB]** dated 08.03.2011 passed by the Tribunal under **Section 129, (B) of the Customs Act,1962 & Financial Act 1994 relating to Service Tax**

Assistant Registrar
(Customs Appeal Branch)

Copy to :

1. Respondent
C.C.(PREVENTIVE)
NEW CUSTOM HOUSE, NEAR
I.G.I. AIRPORT, NEW DELHI
110037.

2. Adv. / Consult
MR.PRABHAT KUMAR
B-51(BASEMENT) SARVODAYA ENCLAVE,
NEAR MOTHER INTERNATIONAL SCHOOL,
NEW DELHI – 110 017.
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
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.
DIVISION BENCH

Customs Appeal No.C/16/2010

(Arising out of Order-in-Original No.05/APSS/CC/Del/NCH/2009/2008 dated 22.10.2009 passed CCE(Adjudication), New Customs House, New Delhi)

For approval and signature:

Hon'ble Mr. S.S.Kang, Vice President
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

M/s. Achiever International — Appellants

Vs.

CCE, New Delhi — Respondent

Present for the Appellant: Shri Prabhat Kumar, Advocate
Present for the Respondent: Shri S.Bajaj, DR

Coram: Hon'ble Mr. S.S.Kang, Vice President
Hon'ble Mr.M.Veeraiyan, Member (Technical)

Date of Hearing/decision: 08.03.2011

Final **ORDER NO.** C/115/11

PER: M.VEERAIYAN

This is an appeal against the order of the Commissioner No.05/APSS/CC/Del/NCH/2009/2008 dated 22.10.09, by which the goods originally imported in the name of M/s. Neeru Trading Co. stands absolutely confiscated and penalty of Rs.60 lakhs (Rs.30 lakhs under Section 112(a) of Customs Act, 1962 and Rs.30 lakhs under section 114AA of Customs Act, 1962) on Shri Vineet Gupta, partner of M/s. Achiever International stands imposed.

2. Heard both sides.

3. The relevant facts, in brief, are that Shri Vineet Gupta is a partner of M/s. Achiever International; that he imported goods i.e. DVD-R in the name of M/s. Achiever International and also in the names of other IEC holders like M/s.Neeru Trading Co, Ashok Nihal Trading co. and M/s.Ashoka Enterprises which were created and managed by Shri Vineet Gupta. On intelligence, the officers of DRI located 6 consignments imported in the name of M/s. Neeru Trading Co. five of ~~other~~ them pending clearance at ICD Ballbhgarh and one at ICD Loni. The proprietor of M/s.Neeru Trading Co. could not be located initially. Investigation with the CHAs and other connected persons indicated that the documents for clearances of consignments imported in the name of M/s. Neeru Trading Co. were given by Shri Vinneet Gupta, partner of M/s. Achiever International. Further investigation revealed that all formalities like opening of accounts in the name of M/s. Neeru Trading Co., obtaining IEC code in the name of Neeru Trading Co. and import in the name of M/s. Neeru Trading Co. were done only by Shri Vineet Gupta. The proprietor of M/s. Neeru Trading Co. was subsequently, produced before the DRI officers who confirmed that the entire activity in the name of Neeru Trading Co. were indeed undertaken only by Shri Vineet Gupta. Accordingly, show cause notice was issued to Shri Vineet Gupta, partner of M/s. Achiever International and proprietor of M/s. Neeru Trading Co. They were jointly and severely directed to show cause as to why the imported goods should not confiscated in terms of

provisions of session 111(d) read with sections 7 and 11 FTDR Act, 1992 and why penalty should not be imposed on them under section 112(a) and 114AA of the Cusotms Act.

3.1 In pursuance of show cause notice, the commissioner ordered confiscation of 43 lakhs pcs. of DVD-R valued at Rs.1,87,18,330/- and 7.80, pcs of DVD-R valued at Rs.34,71,362/-. He imposed totally penalty of Rs.60 lakhs on Shri Vineet Gupta (Rs.30 lakhs under 112(a) and penalty of Rs.30 lakhs under 114AA). He also imposed of Rs.50,00/- proprietor of M/s.Neeru Trading Co. under section 112(a).

3.2 The present appeal is by Shri Vinnet Gupta, partner of Achiever International challenging absolutely confiscation of the goods and challenging imposition of penalty on him.

4.1 Ld. Advocate for the appellant submits that the import of DVD-R is permissible under OGL. The appellant has merely used the names of other IEC holders to import the goods in addition to import made in the name of partnership firm M/s. Achiever international. They filed bills of entry for the consignment in the name of Neeru Trading Co. as specifically permitted by the Hon'be High Court of Delhi passed in writ petition filed by them. The supplier abroad have also filed writ petition before the Hon'ble High Court of Delhi and as permitted by the High Court issued fresh bills of lading in the names of partnership firm. The investigation by the DRI confirmed that Shri Vineet Gupta is the owner of the imported goods.

4.2 He refers to section (26) according to which the term 'importer' is defined as follows:

> *"Importer" in relation to any goods at any time between their importation and the time when they are cleared for home consumption includes any owner or any person holding himself out to be the importer."*

4.3 He also refers to provisions of 125 of Customs Act which envisages that in the event of confiscation of even the prohibited goods the officers may "give to the owner of the goods----- an option to pay in lieu of confiscation, such fine as the said officer think fit."

4.4 He submits that imports made using the IEC code of another importer should not be treated as import of prohibited goods. The violation, if any, is a technical violation. As the import of the goods per se is not prohibited, the option for redemption should be given. He also submits that the imported goods being electronic goods, they depreciate in value fast and therefore, they should be given an option on payment nominal fine.

4.5. Inasmuch as the appellant have not imported prohibited goods, penalty is not justified under section 112(a) and 114AA. At any rate there is no justification for separate penalties under 112(a) and 114AA.

5. Ld.SDR taking us through the order of the Commissioner submits that the appellants have fraudulently ~~issued~~ used the IEC code ~~to~~ of fictitious party and therefore the import should be treated as that of prohibited goods and therefore the order for absolute confiscation

and imposition of penalty are fully justified and the same should be upheld.

6.1 We have carefully considered the submissions from both sides and perused the records. Shri Vineet Gupta, partner of M/s. Achiever international has imported the goods in the name of Achiever International and in the names of other firms set up by him as front entity. When he is partner of a firm having IEC code, the reason for resorting to import in the name of front entities has not been satisfactorily explained. We do not envisage any honourable purpose for using such entities for importing otherwise permissible imports. The statement of Shri Vineet Gupta and statements of persons associated with clearing consignments imported in the mane of M/s. Neeru Trading Co. and the statement of proprietor of M/s. Neeru Trading Co. clearly establish that Shri Vinnet, partner of M/s. Achiever is the owner of the imported goods. The show cause notice issued also, on the same ground, seeks Shri Vinnet Gupta and proprietor of M/s. Neeru Trading Co. to jointly and severely show cause as to why the imported goods should not be confiscated and why penalty should not be imposed on them. In other words, show cause notices clearly recognises Shri Vineet Gupta, partner of M/s.Achiever International as the owner of the goods. The quantum of penalty imposed on Shri Vineet Gupta is much higher when compared to penalty imposed on M/s. Neeru Trading Co. which also impliedly taken this fact into account.

6.2 In other words, the goods are liable for confiscation for having imported using IEC code of another importer who has disowned any role in the import of such consignment. However, it is not disputed that the import is not of prohibited goods as such. Therefore, these goods, in our considered opinion, deserve to be given an option for redemption on payment appropriate fine. Considering that the goods were imported in August, 2008 and that the goods are electronic goods, we deem it appropriate to allow the goods on payment of fine of Rs.40 lakhs (Rupees Forty Lakhs only). This option should be exercised within three months from the date of receipt of this order.

6.3 Regarding the penalty imposed on Shri Vineet Gupta, we find that as the partner of M/s. Achiever International, he was instrumental in setting up frond entities and arranging import and clearance of goods using their names and the methods adopted by him were dubious in nature and therefore calls for imposition of penalty. However, as contended by learned Advocate there is no justification of separate penalty under 112(a) when there is a penalty imposed under section 114AA. Therefore penalty under 112(a) is set aside in full. Considering the entire facts and circumstances of the case, the penalty imposed under114AA on Shri Vineet Gupta, partner is reduced from Rs.30 lakhs to Rs.10 lakhs (Rupees Ten Lakhs only)

7. The appeal is disposed of as above.

(Pronounced in the open court)

(S.S.KANG)
VICE PRESIDENT

(M.VEERAIYAN)
MEMEBR (TECHNICAL)

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