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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/171 /2007 - CU[DB] Date **01/06/2011**

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

To :
AFTAB AALAM KHAN

S/O LATE SHRI ABDUL SAMAD KHAN,
R/O, 72-H, LOCO SHED, MORADABAD (U.P.)

AFTAB AALAM KHAN Appellant

Vs

C.C.E MEERUT-II Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/212/ 2011 CU[DB]** dated 30.05.2011 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.E MEERUT-II
OPPOSITE SHAHEED PARK,
DELHI ROAD, MEERUT (U.P.)

2. Adv. / Consult
MR.PIYUSH KUMAR,ADV
B-25,LAJPAT NAGAR-III,
NEW DELHI – 24.

3. C.D.R
4. Bar association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
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. Taxmann Allied Service Pvt Ltd., 59/32, New Rohtak Road, New Delhi - 110005
9. Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Harvana)
11. TaxIndiaOnline.com Pvt Ltd., Unit No.1, 2nd Floor,Vasant Arcade,Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Office Copy
13. Guard file

Assistant Registrar
(Customs Appeal Branch)

TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing:26.05.2011
Date of decision:26.05.2011

Customs Appeal No.C/171 of 2007

[Arising out of Order-in-Original No.01/Comm./M-II/2007 dated 2.2.2007 passed by the Commissioner of Central Excise, Meerut (U.P.)].

Aftab Aalam Khan — Appellant

Vs.

CCE, Meerut — Respondent

For approval and signature:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

1. Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.	No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
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.

Appearance: Rep. by None for the appellants.
Rep. by Shri Sonal Bajaj, SDR for the respondent.

CORAM: **Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
Hon'ble Shri Mathew John, Member (Technical)

Final Order No. C/212/11/Dated: 26.05.2011

<u>Per Archana Wadhwa:</u>

On being matter called, nobody appeared on behalf of the appellant.

2. We have ~~carefully~~ accordingly heard Shri Sonal Bajaj, SDR and have gone through the impugned order of the Commissioner. The challenge in the present appeal is to imposition of penalty of Rs.90 Lakhs imposed upon the appellant, which is a CHA, in terms of the provisions of Section 112 of the Customs Act, 1962.

3. As per the facts on record, one M/s. Ashfa Himarc of Moradabad imported 800 M.T. of Brass Scrap at nil rate of duty, in terms of the advance licences. The brass scrap was to be used in the manufacture of brass artware and the said M/s. Ashfa Himarc were required to export 745 M.T. of brass art. Investigations conducted by the Revenue revealed that they have not fulfilled the export obligations and 11 shipping bills submitted by them in the office of the Joint Director General of Foreign Trade, Moradabad, as a proof of their export, were fake and fictitious.

4. In the above back ~~draw~~ drop, proceedings were initiated against M/s. Ashfa Himarc for confirmation of customs duty and imposition of penalty. The notice ~~was~~ also proposed penalty on the present appellant. The said proceedings culminated into an order passed by the Commissioner confirming demand of duty of Rs.9057 Lakhs approximately against M/s. Ashfa Himarc along with confirmation of interest and imposition of penalties. In addition, the Commissioner imposed penalty of Rs.90 Lakhs on the present appellant, who is the clearing agent and filed bills of entry on behalf of M/s. Ashfa Himarc for import of the brass scrap. The said order stands impugned before us.

5. We make it clear that the appeal of M/s. Ashfa Himarc is not before us. As such, we dealt with the only imposition of penalty of Rs.90 Lakhs on the present appellant, a CHA agent.

6. On going through the order of the Commissioner, We find not even a whisper of any fraud attributable to the present appellant. There is neither any discussion nor any evidence referred to by the Commissioner attributable to the activities of the present appellant. We also note that admittedly the import of brass scrap attracted nil rate of duty at the time of their import and it was only subsequently when the export obligation was not fulfilled by the importer and that the duty became payable on the brass scrap. Subsequent activities of the importer in not fulfilling the export obligations cannot be made a ground for holding the present appellant as guilty of any contravention of law so as to make him liable to penalty. As such, we find no justifiable reasons to impose penalty upon him. We accordingly set aside the penalty of Rs.90 Lakhs imposed upon the appellant and allow his appeal with consequential relief.

(Archana Wadhawa)
Member (Judicial)

(Mathew John)
Member (Technical)

Ckp.