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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/493 & 579/2010 - CU[DB] Date **11/03/2011**

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

To :
M/S G&K MODA PLUS (P) LTD.,

A-38-I, SECTOR-64, NOIDA, U.P.

M/S G&K MODA PLUS (P) LTD., Appellant

Vs

C.C. (EXPORT) NEW DELHI 107-108/11 Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/[illegible] CU[DB]** dated 28.02.2011

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. (EXPORT) NEW DELHI
AIR CARGO EXPORT, NEW
CUSTOM HOUSE, NEW DELHI
110037

2. Adv. / Consult
MR.PRADEEP JAIN,ADVOCATE
34 GUJRAT VIHAR, VIKAS MARG,
DELHI-92

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.

COURT NO. IV

Customs appeal No. 493 & 579 of 2010

[Arising out of Order-in-Original No. ACE/J.I.J.M/56/2010 dated 18.08.2010 passed by the Commissioner of Customs, Air Cargo (Exports), New Delhi].

Date of Hearing: 22nd February, 2011

For approval and signature:

Hon'ble Shri Ashok Jindal, Member (Judicial);
Hon'ble Shri Mathew John, 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?	No
3	Whether Their Lordships wish to see the fair copy of the Order?	No
4	Whether Order is to be circulated to the Departmental authorities?	No

C/493/2010
M/s. G&K Moda Plus (P) Ltd., Appellants

Vs.

C.C., Air Cargo (Exports),
New Delhi Respondent

C/578/2010
C.C., Air Cargo (Exports),
New Delhi Appellant

Vs.

M/s. G&K Moda Plus (P) Ltd. Respondents

Present for the Appellant :Shri Pradeep Jain & Shri Prashant, Advocates
Present for the Respondent :Shri Sonal Bajaj, SDR

Coram: Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri Mathew John, Member (Technical)

FINAL ORDER NO. C/107-108/11

Per ASHOK JINDAL:

The Assessee as well as Revenue, both are in appeal against the impugned order. The facts of the case are that the assessee filed a shipping bill for export declaring the item as 100% Polyster Ladies Blouse (Ponchoo) to South Africa through Saudi Arabia under Drawback Scheme under Srl. No. 620603A of the Drawback Schedule. The goods were examined and found that the goods declared are 100% Polyster Ladies hijab [i.e. polyester knitted garments (others)] and are covered under Srl. No. 611703A of the Drawback Schedule. It was found that the assessee had mis-declared goods with intention to take excess draw back claim. The goods were valued at more than Rs. 2 crores and the excess amount intended to avail by way of drawback was near about Rs. 23 lakhs. Therefore, the goods were confiscated with an option to redeem the same on payment of Rs. 20 lakhs as redemption fine under Section 125. In addition, the Adjudicating Authority imposed a penalty of Rs. 20,000/- under Section 114 of the Customs Act, 1962 ibid.

2. The assessee is in appeal with a prayer for reduction in redemption fine and the Revenue is in appeal for enhancement of penalty.

3. Heard both sides.

4. On careful examination of submissions made by both sides, we find that as the shipping bills were filed by the assessee in August, 2010 and the goods are lying at port the assessee has incurred heavy detention and demurrage charges. Moreover, season is over as these garments were to be used during festive season of Id. We find that redemption fine is at higher side, therefore, exercising our discretionary power we reduce the redemption fine to Rs. 10,00,000/- (Rupees ten lacs only).

5. We have also considered the contention of the learned D.R. and found that in such a case the adjudicating authority has imposed a penalty of Rs. 20,000/- only which is at lower side. Considering the nature of offence committed by the assessee and the malafides, we enhance the penalty to Rs. 5 lakhs.

6. With these observations both the appeals are disposed off.

(Dictated & pronounced in the Open Court.)

(ASHOK JINDAL)
JUDICIAL MEMBER

(MATHEW JOHN)
TECHNICAL MEMBER

RK