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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/497 /2006 - CU[DB]   Date **15/03/2011**

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

To :
ASIAN GLOBAL LTD.

A-47, GULMOHAR PARK NEW DELHI

ASIAN GLOBAL LTD. Appellant

Vs

COMMISSIONER (APPEALS) CUSTOMS & CENTRAL EXCISE Respondent

I am directed to transmit herewith a certified copy of **Final order No. C/109/ 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
COMMISSIONER (APPEALS),
CUSTOMS & CENTRAL EXCISE,
B-123, SECTOR-5 NOIDA

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)

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

Customs Appeal No. 497 of 2006

[Arising out of Order-in-Appeal No. 68/CE/NOIDA/2006 dated 22.3.2006 passed by the Commissioner of Customs & Central Excise (Appeals), NOIDA]

For approval and signature:

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

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :

3. Whether Their Lordships wish to see the fair copy of the Order? :

4. Whether Order is to be circulated to the Departmental authorities? :

M/s. Asian Global Ltd. Appellants

Vs.

Commissioner of Customs Respondent
NOIDA

Appearance:
Shri Pradeep Jain, Advocate for the Appellants
Shri Sonal Bajaj, DR for the Respondent

CORAM:

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

Date of Hearing/decision : 08.03.2011

Final **ORAL ORDER NO. C/109/11**

Per S. S. Kang (for the Bench):

Heard both sides. The appellants filed this appeal against the impugned order passed by the Commissioner (Appeals). The brief facts of the case are that the appellants made import of the goods which were declared in the Bill of Entry as 'rejected pipe re-rollable scrap' classifiable under heading 72044900 of the Customs Tariff. During the examination of the goods, it was found that the goods in question are 'rejected pipe seconds quality'. In the bill of lading also description of the goods is given as 'rejected pipe seconds quality'. On the basis of this, the Customs authorities rejected the classification claimed by the appellants and the value declared by the appellants and on the ground of mis-declaration the adjudicating authority enhanced the value from USD 265 /- MT to USD 305/- MT and ordered confiscation of the goods. The appellants were given option to redeem the goods on payment of redemption fine of Rs.2,25,000/- and penalty of Rs.40,000/- was imposed on the appellants.

2. The appellants filed appeal and Commissioner (Appeals) rejected the appeal.

3. The contention of the appellants is that the appellants were regularly importing 'rejected pipe re-rollable scrap' and ordered for the same. In the invoice and in the packing list the description of the goods is rejected pipe re-rollable scrape. It is only in the bill of lading 'rejected pipe seconds quality' is mentioned. The contention is that

imported goods are for rerolling ~~and~~, therefore, there is no mis-declaration on the part of the appellants. Hence, the impugned order is not sustainable.

4. The learned SDR on behalf of the Revenue submitted that in the bill of lading, the description of the goods was mentioned as 'rejected pipe seconds quality'. The examination report is also to the same effect. Therefore, the goods are rightly held to be classifiable under CTH 73069011 of the Tariff. In respect of valuation, the ~~contention of the~~ Revenue in relying on the Bill of Entry No. 999589 dated 20.10.95 under which the 'rejected pipe seconds quality' was imported and the value declared is USD 305/- MT. The contention of the revenue is that impugned order has been rightly passed.

5. We find that description given by the appellants as 'rejected pipe re-rollable scrape' is not accepted by the Revenue as the examination report and bill of lading shows that the goods are 'rejected pipe seconds quality'. In respect of value, we find that the 'rejected pipe seconds quality' have been imported in to India at USD 305/-MT during the same period. In view of the examination report, we find no infirmity in the impugned order whereby the 'rejected pipe seconds quality' has been reclassified ~~as~~ under heading 73069011 of the Customs Tariff and the value of the goods were enhanced after relying upon the import of the same goods at the same time.

6. The differential duty as per the impugned order comes to Rs.1,00, 933/-. In these circumstances, we find that Redemption fine calls for reduction and is reduced to Rs.One lac from Rs.2,25,000/-.

7. In respect of penalty, we find that as there is no evidence on record the appellants has mis declared the goods with intent to evade payment of duty. The appellants made order for 'rejected pipe re-rollable scrap' and declared the same as per invoice. In these circumstances, we find it is not a case for imposition of penalty. The penalty imposed on the appellants is not sustainable and hence set aside.

8. The appeal is disposed of as indicated above.

(S. S. Kang)
Vice President

(M. Veeraiyan)
Member(Technical)

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