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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/68 /2009 - CU[DB] Date 13/06/2011

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

To :
M/S SHREYA OVERSEAS,
27/2, FIRST FLOOR INDUSTRIAL ESTATE,
NEW ROHTAK ROAD, NEW DELHI.

M/S SHREYA OVERSEAS, Appellant

Vs

C.C. (EXPORT) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/230/ 2011 CU|DB|** dated 03.06.2011 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.NAVNEET PANWAR,ADVOCATE
D-1517/03 141/1,SHAHPUR JAT, N DELHI.

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 (Haryana)
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)

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
Court No.II

C/Appeal No.68/2009

(Arising out of order in original No.JJ/ACE/21/2008 dated 30.9.2008 passed by the Commissioner of Customs, New Delhi)

Date of Hearing: 25.5.2011

For Approval and signature:

Hon'ble MS. Archana Wadhwa, Judicial Member
Hon'ble Mr.Mathew John, Technical Member

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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? Yes

2. Whether it would 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 Department Authorities? NO

M/s Shreya Overseas — Appellants

Vs

CC, New Delhi — Respondent

Appeared for the Appellant: Shri Navneet Pawar, Advocate
Appeared for the Respondent: Shri S.R. Meena, SDR

Coram: **Hon'ble Ms. Archana Wadhwa, Member (Judicial)**
Hon'ble Mr. Mathew John, Member (Technical)

Final ORDER No. C/230/11

Per Mathew John:

This is a case where Revenue made a case against three merchant exporters in the name and style of M/s G & S International, New Delhi and M/s A's Raj International and Shreya Overseas, New Delhi alleging fraudulent exports of Shawls and Readymade garments to CIS countries via UAE and fraudulent claiming of DEPB benefit to the tune of 9.67 crores and drawback benefit of Rs. 1.88 crores. The allegations are that the goods were overvalued; sales proceeds were not realized but realization shown using fake currency declaration forms of passengers arriving in India from CIS countries and making deposit of foreign currencies in to the account of the exporters using such fake CDFs and claiming such payment to be realization of export proceeds; forged bank realization certificates were produced and thus export benefits were claimed fraudulently. A show cause notice for recovering the drawback already sanctioned to the tune of Rs. 1.88 crores and proposing confiscation of goods under section 113 and proposing penalty under 114 of the Customs Act was issued and was adjudicated. In this Appeal one of the parties namely M/s Shreya overseas, affected by the order-in-original is in Appeal against the adjudication order. In the order a penalty of Rs. 3 lakhs has been imposed on Mr. Pramod Garg, the proprietor of Shreya Overseas, under section 114 of the Customs Act and the present appeal is against this penalty.

2. The Appellant had exported goods under four Shipping Bills namely 6576149 dt 10-01-02, 1206813 dt 02-04-2003, 120689 dt 02-04-2002 and 1250102 dt 09-02-2002. Out of these the impugned order deals with only the first Shipping Bill which alone was filed in the jurisdiction of the adjudicating authority. As per this SB, DEPB benefit of Rs. 3,26,841/- was granted to M/s Shreya Overseas.

3. The case made out by the counsel for the Appellant during hearing is that the Appellant was the son-in-law of Shri. Sita Ram Aggarwal the proprietor of M/s G & S International, New Delhi and M/s A's Raj International and that the Appellant had opened the firm of Shreya Overseas and in good faith allowed his father-in-law to conduct business in the name of that firm. The counsel pleads that he is totally innocent of all the misdeeds accused on him in the SCN.

4. The Ld DR points out that this is a case where the Appellant was actively involved in collecting the drawback amount in as much as the amounts were paid against cheques issued by him. Further he points out that in this case loss has been caused to Revenue by the fraudulent actions of the Appellant and such money cannot be recovered because the imports against the DEPB licenses fraudulently obtained by the Appellant was made by other parties. He pleads that the penalty amount should be decided having regard to the revenue loss that the Appellant was instrumental is causing.

5. This pleading about the innocence of the Appellant is not acceptable. A person who signs blank application forms, cheques etc which result in defrauding of revenue cannot be held to be acting in good faith to the public at large though in this case the person concerned might have acted in good faith to his father-in-law. The penalty imposed on the Appellant is sustainable under the law. We have looked at the issue whether the quantum of penalty is reasonable. The actions of this Appellant had resulted in revenue loss to the tune of Rs. 3.26 lakhs by way of DEPB licenses and this loss cannot be recovered because such licenses get sold to third

parties. Considering this aspect the penalty of Rs. 3.00 lakhs imposed is reasonable and does not require interference by this Tribunal.

6. So the Appeal is rejected.
(order to be pronounced on 3-6-11.

(Archana Wadhwa)
Member(Judicial)

(Mathew ~~John~~)
Member(Technical)