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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/22 /2009-23 /2009, C/MISC./829/2009 Date **13/06/2011**

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

To :
1. SHRI RAVINDER RAJURKAR
2. IDBI BANK LTD.
KAROL BAGH BRANCH,
2046 GURDWARA ROAD,
KAROL BAGH, NEW DELHI.

IDBI BANK LTD. Appellant

Vs

C.C. (EXPORT) NEW DELHI **MISC. ORDER NO.C/121/2011** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/231-232/ 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.DR. V.P JUNEJA AND MR. ANIL MALHOTRA,
W-31, G.K. – 1,
NEW DELHI 110 048.

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.III

Customs Appeal Nos. 22-23/2009 & Misc 829/2009

(Arising out of order in oriignal 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?

2. Whether it would 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 Department Authorities?

1.M/s IDBI Bank Ltd
2. Ravinder Rajurkar — Appellants

Vs

CC(Export), New Delhi — Respondent

Appeared for the Appellant: Shri V.P. Juneja, 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)

M. O. No. C/121/11

Final ORDER No. C/231-232/11

Per Mathew John:

In these proceedings two Appeals are being decided one from IDBI Bank Ltd and another from Shri Ravinder Rajurkar an employee of the said Bank. IDBI Bank Ltd. became a party in this proceeding because of certain irregularities, which resulted in revenue loss to the Government, committed by erstwhile United Western Bank which was taken over by IDBI Bank during 2003-04. Shri Ravinder Rajurkar was an employee of the said United Western Bank and was handling matters relating to the irregularities involved and presently he is an employee of IDBI Bank which took over his previous employer.

2. A case was made by Revenue 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 M/s Shreya Overseas, New Delhi that they made fraudulent exports of Shawls and Readymade Garments to CIS countries via UAE and claimed 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 (CDF) of passengers arriving in India from CIS countries and making deposit of foreign currencies in to the account of the firms using such fake CDFs and claiming such payment to be realization of export proceeds 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 from the exporters and proposing confiscation of goods under section 113 and proposing penalty under section 114 of the Customs Act was issued and was adjudicated. The adjudication order imposed a penalty of Rs. 5.00 lakhs on IDBI Bank Ltd and Rs. 5.00 lakhs on Shri. Ravinder Rajurkar under section 114 of the Customs Act.

3. The omissions and commissions resulting in the fraud on revenue are primarily on the part of Shri. Ravider Rajurkar. United Western Bank had a vicarious responsibility as his employer. The responsibility that can be attributed to IDBI bank is further remote as an entity which took over the business of United Western Bank. Para ix on page 43 of SCN and para 190 of the impugned order are reproduced below for better appreciation:

Extract from Show Cause Notice:

"ix) And whereas in view of RBI Circular AD(MA) Number 2 dated 16.1.1992, it was mandatory for bank to prima facie satisfy themselves that the foreign currency deposited in the bank by the exporters represented payment for exports. For this purpose, it was mandatory for bank to satisfy themselves with regard to the genuineness of the documents submitted by the exporter along with foreign currency. Bank could have easily made out by matching the signatures of the tourist buyers on the photocopies of the passport with the signature of the tourist buyer on the CDFs. Bank and their staffs in their respective statements have admitted that they were careless in matching the signatures. Moreover, the fictitious character of these request letters could have easily been ascertained by a prudent banker on comparing the signature of these documents with the photocopies of the passport. All the CDFs purported to be issued on various dates over a span of 2 years, made in one single hand writing, which itself was enough to raise suspicion about the genuineness of these CDFs. Bank admitted in clear terms the gross irregularities on their part and deviation from the normal course while accepting the foreign currency and scrutinizing the documents being submitted by these exporters. The bank thus facilitated these exporters in accounting the foreign currency so deposited by them in their bank as export proceeds whereas the fact is that foreign currency so deposited has no nexus with the goods exported and the same appears to have been illegally procured by these exporters from the grey market."

Extract from order in original:-

"Shri Ravindeer Rajurkar, Officer Scale-II, United Western Bank Ltd now known as M/s IDBI Bank Ltd has abetted the criminal act in as much as he did not send the CDFs submitted by Noticee No. 1,2 and 3 for verification to the proper authorities. Further as instructed in RBI Circular AD(MA) Number 2 dated 16.1.1992, it was mandatory for the bank and its personnel to prima facie satisfy themselves that the foreign currency deposited in the bank by the exporters represented payment for exports and was thus procured lawfully. The Bank's staff in their respective statements have admitted carelessness in matching the signatures on the passport with those available on the letters and CDFs submitted by the notices along with foreign currency deposits. Bank admitted in clear terms the gross irregularities on their part and deviation from the procedure while accepting the foreign currency and scrutinizing the documents submitted by the exporters. They, thus facilitated the notices in accounting the foreign currency deposited by them in the bank as export proceeds. The said foreign currency was procured illegally as the notices have not been able to procure any legal document for possession of the same after department established the fake character of the CDFs submitted by them. As far as the retraction of statements in their written reply submitted on 18.8.05 (i.e. after more than one year of the statement being recorded) is concerned, I may refer back to the matter already discussed in respect of other notices in para 180 hereinabove that such retractions do not hold any water as far as their evidentiary value is concerned. Thus the bank in general and Shri Ravinder Rajurkar in particular have failed to perform their duty and thus facilitated the exporters in their vicious intentions resulting in loss to the government exchequer. They were careless to the extent to allow the facilities of their bank to be used by the other noticees for extending their illegal activities and giving them the false cover of legal proceeds. Shri Ravinder Rajurkar and M/s United

Western Bank Ltd have thus rendered themselves liable for penalty under section 114."

4. The argument of the Appellant is that they had no personal knowledge about the fraud committed on revenue. His omissions can at best be classified as carelessness as found by the adjudicating authority and for careless ness no penalty can be imposed under section 114 of Customs Act, 1962. It is also argued that for imposing any penalty mensrea has to be proved and no mensrea is proved in this case.

5. The Ld DR on the other hand points out to the paras in SCN and O-in-O as reproduced above and plead that it was omissions of acts the Appellant was duty bound to do that resulted in revenue loss and hence penalty imposed under section 114 of Customs Act is proper.

6. It is seen that the finding against Shri Ravinder is one of carelessness and failure to perform his duties. These might constitute facts to institute departmental proceedings against Shri Ravinder but we are of the view that these facts are not adequate to constitute an offence under section 114 of the Customs Act. This is because the penalty under section 114 can be imposed only on a person who in relation to any goods does or omits to do any act which act or omission would render the goods liable to confiscation. There is no evidence forthcoming that Shri Ravinder had handled the impugned goods or even handled documents about which he was aware that they related to goods liable to confiscation under section 113 of the Customs Act. So we are of the view that the penalty imposed on Shri. Ravinder under section 114 of the Customs Act is not maintainable.

7. The liability of IDBI bank arises basically from the negligence of Shri Ravinder. Further negligence on the part of

his supervisors also is alleged in the show cause notice. The basic argument raised on behalf of IDBI is that for imposition of penalty under Section 114 of Customs Act, the person concerned should have handled the goods. It is submitted on behalf of the appellant that the United Western Bank which was taken over by IDBI did not handle the goods. It is submitted that the banking transactions relating to the export goods were carried out in the normal course of business without any mensrea. It is also argued that the liability of IDBI bank is further remote because the offence if any was committed by United Western Bank which they took over. It is argued that a company taking over another company cannot be held liable for the offence committed by the company taken over.

8. The arguments raised on behalf of IDBI are valid arguments. Further considering that we are setting aside penalty on Shri Ravinder, penalty on IDBI bank is not maintainable.

9. Accordingly the Misc Application requesting for early hearing and the two appeals are allowed. The penalties imposed on these two appellants in the impugned order are set aside.

(Order pronounced on 3/6/11)

(Archana Wadhwa)
Member(Judicial)

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