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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/572 /2008-574 /2008 - CU[DB] Date **22/06/2011**

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

To : 1. SHRI ASHWINI KUMAR JAIN, DIRECTOR
2. M/S SUKUMAR CHEMICALS PVT. LTD.,
(NOW M/S SEJAI INTERNATIONAL LTD.)
82/1, RAILWAY ROAD, MEERUT (U.P.)

M/S SUKUMAR CHEMICALS PVT. LTD. Appellant

Vs

C.C.E. MEERUT II Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/253-255/ 2011 CU[DB]** dated 20.06.2011 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.E. MEERUT II
OPP. SAHEED PARK (NEAR
ASHOK KI LAT) DELHI ROAD,
MEERUT (UP)

2. Adv. / Consult

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
14. M/S AGEMO LEATHER COMPONENTS PVT. LTD.
(NOW KNOWN AS M/S AGEMO EXIM LTD.)
BASEMENT OF PARSHVNATH PLAZA,
DELHI ROAD,MORADABAD. (U.P.)

Assistant Registrar
(Customs Appeal Branch)

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST BLOCK NO.II, R.K. PURAM, NEW DELHI-110066.

DIVISION BENCH

Customs Appeal No.C/572-574/2008

(Arising out of Order-in-Original No.11/Comm./M-II/2008 dated 9.6.2008 passed by the CCE , Meerut-II)

For approval and signature:
Hon'ble Mr.S.S.Kang, Vice President
Hon'ble Mr.M.Veeraiyan 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?	Yes
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

1.M/s.Sukumar Chemicals Pvt.Ltd. Appellant
2.M/s.Agemo Leather Components Pvt.Ltd.
3.Shri Ashwani Kumar Jain, Director of
M/s.Sukumar Chemicals Pvt.Ltd.

Vs.
CCE, Meerut-II Respondent

Present for the Appellant: Shri Ashwin Kumar Jain, in person
Present for the Respondent: Shri Sumit Kumar, SDR

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

Date of Hearing: 17.03.2011
Date of Decision: 20-06-2011

Final **ORDER NO.** C/253-255/11

PER: M.VEERAIYAN

These three appeals arise out of common order in original No. 11/Commr/M2/2008 dated 9.6.2008.

2.1 The operative portions of the impugned order of the Commissioner reads as follows:

"ORDER

(i) *I hereby reject the said 28 Drawback claims for Rs.2,02,21,503.00 (Rupees Two Crore Two Lacs Twenty One Thousand Five Hundred Three only) submitted by M/s.Sukumar Chemicals (P) Ltd., 82/1, Railway Road, Meerut being not maintainable, as claimed by them on fraudulent export of old & used garments in the garb of readymade garments fro the reasons mentioned earlier.*

(ii) *I reject the said 30 Drawback claims for Rs.2,13,95,244.00 (Rupees Two Crore Thirteen Lacs Ninety Five Thousand Two Hundred Forty Four only) submitted by M/s.Agemo Leather Components (P) Ltd., Moradabad, being not maintainable, as claimed by them on fraudulent export of old & used garments in the garb of readymade garments fro the reasons mentioned earlier*

(iii) *I reject the claim of benefit of the said DEPB Scrips for issue of 04 TRA for Rs.77,08,115.00 (Rupees Seventy Seven Lacs Eight Thousand One Hundred Fifteen only) (wrongly taken as Rs.77,88,116.00 in the show cause notice) as submitted by M/s.Sukumar Chemicals (P) Ltd., 82/1, Railway Road, Meerut which are not admissible, as the same have been filed fraudulently against the fraudulent export of watches at inflated value.*

(iv) *I reject the claim of benefit of the said DEPB Scrips for issue of 01 TRA for Rs.25,45,761.00 (Rupees Twenty Five Five Lacs Forty Five Thousand Seven Hundred Sixty One only) as submitted by M/s.Agemo Leather Components (P) Ltd., Moradabad which are not admissible, as the same have been filed fraudulently* *against the fraudulent export of PVC Shoe Soles at inflated value.*

(v) *I confiscate the goods i.e. old & used garments Rs.11,89,50,027.00 (Rupees Eleven Crore Eight Nine Lacs Fifty Thousand Twenty Seven only) which had been fraudulently exported by M/s.Sukumar Chemicals (P) Ltd., 82/1, Railway Road, Meerut during the period 6/98 to 8/98 against the said shipping bills under the provisions of Section 113 (i) of Customs Act, 1962. Since the exported goods are not available for confiscation, I impose a fine of. Rs.11,89,50,027.00 (Rupees Eleven Crore Eight Nine Lacs Fifty Thousand Twenty Seven only) on M/s.Sukumar Chemicals (P) Ltd., 82/1, Railway Road, Meerut under Section 125 of the Customs Act, 1962.*

(vi) *I confiscate the goods i.e. old & used garments Rs.12,58,54,409.00 (Rupees Twelve Crore Fifty Eight Lacs Fifty Four Thousand Four Hundred Nine only) which had been fraudulently exported by M/s.Agemo Leather Components (P) Ltd., Moradabad during the period 6/98 to 8/98 on the strength of 30 shipping bills under the provisions of Section 113 (i) of Customs Act, 1962. Since the exported goods are not available for confiscation, I impose a fine of Rs.12,58,54,409.00 (Rupees Twelve Crore Fifty Eight Lacs Fifty Four Thousand Four Hundred Nine only) on M/s.Agemo Leather Components (P) Ltd., Moradabad under Section 125 of the Customs Act, 1962.*

(vii) *I also impose a penalty of Rs.2,79,29,618.00 (Rupees Two Crore Seventy Nine Lacs Twenty Nine Thousand Six Hundred Eighteen only) [Rs.2,02,21,503.00 + 77,08,115.00] on M/s.Sukumar Chemicals (P) Ltd., 82/1, Railway Road, Meerut under Section 114 of the Customs Act, 1962.*

(viii) *I also impose a penalty of Rs.2,39,41,005.00 (Rupees Two Crore Thirty Nine Lacs Forty One Thousand Five* *only) [Rs.2,13,95,244.00 + 25,45,761.00] on M/s.Agemo Leather Components (P) Ltd., Moradabad under Section 114 of the Customs Act, 1962.*

(ix) *I also impose a penalty of Rs.2,79,29,618.00 (Rupees Two Crore Seventy Nine Lacs Twenty Nine Thousand Six Hundred Eighteen only) on Shri Ashwani Kumar Jain, Director of M/s.Sukumar Chemicals (P) Ltd., 82/1, Railway Road, Meerut under Section 114 of the Customs Act, 1962.*

(x) *I also impose a penalty of Rs.2,39,41,005.00 (Rupees Two Crore Thirty Nine Lacs Forty One Thousand Five only) on Shri Ashwani Kumar Jain, Director of M/s.Agemo Leather Components (P) Ltd., Moradabad under Section 114 of the Customs Act, 1962.*

(xi) *No penalty is imposed upon Shri Balbir Singh Sethi, Managing Director of M/s.Sukumar Chemicals (P) Ltd., as he was not made as a notice, in the impugned show cause notice."*

2.2 The above order has been passed based on the findings that the appellant -companies have exported old and used garments, and substandard wrist watches and PVC soles at highly inflated prices and obtained higher and ineligible amounts as draw back; that the foreign buyer is closely related to Shri Ashwini Kumar Jain who runs the above two companies which exported the above consignments; the local suppliers of garments, wrist watches and PVC soles meant for export were either found to be non-existent in the addresses furnished in the documents or they were firms controlled by Shri Ashwini Kumar Jain giving rise to serious doubt about the quality of exported goods.

2.3 Further, consignments declared by the above exporters claiming them to be ready made garments were found to be used and soiled clothes as against declared items and were seized on 14.9.98 and separate proceedings were initiated.

3.1 Shri Ashwini Kumar Jain appearing on behalf of the appellant Companies and himself submitted that the proceedings relating to seized goods alleged to have been mis declared and seized on 14.9.98 is totally a different proceedings. Merely because the consignments in three containers seized on 14.9.98 were found to be mis declared, no presumption should be made that the earlier exports made by the above companies were also of substandard items.

3.2 The documents which were seized on 14.9.98, after completion of investigation and after issue of show cause notice relating to seized consignments were released to them by the preventive department as seen from the acknowledgement dated 20.3.99. However, these documents were destroyed in the riots which took place in October, 1999.

3.3 The consignments exported were subject to examination by the officers and examination did not reveal any discrepancy. Since the goods have been exported after due examination, the rejection of draw back claims and denial of benefit of DEPB scrips are totally unjustified.

3.4 In respect of goods seized on 14.9.98, show cause notice was issued on 11.3.99. In the writ petition filed by the appellants, affidavit was filed by the department in November, 99 alleging that there was collusion between the appellants and the officers in exporting the said consignments resorting to mis-declaration. However, the show cause notice dated 29.8.05 alleging fraudulent exports have been issued only to the appellants and no show cause notice has been issued to any of the officers clearly indicating that there is no case for allegation of collusion. The impugned order dated 9.6.08 clearly takes note of the fact that no show cause notices under the Customs Act have been issued to any of the officers.

3.5 Some of the consignments have been cleared after factory stuffing and for the said purpose the permission of the officers have been taken and charges for over time have also been paid. In other cases, the consignments were brought to the ICD and they were examined in the ICD itself and exported. The past consignments have been examined by different officers, posted during the relevant time.

3.6 The overseas investigation through Interpol no doubt indicated that he was one of the partners in the Discovery General Trading in order to grant him a resident visa in UAE. This arrangement was made merely to look after the business interest. Referring to para 6 and 7 of the report dated 29.10.02 of the Interpol Abbu Dabi he submits that what was exported by them were only new garments from India and that the UAE company was not dealing in used goods. This part of the report which was favourable to the appellants have been ignored by the Commissioner.

3.7 Referring to the investigation by the department from the suppliers of goods in India, he submits that mere absence of the suppliers in the given addresses during the investigation undertaken in 2003 does not indicate that suppliers did not exist in the given addresses during the relevant time. He submits that the purchases were made from the buyers as mentioned in the balance sheet and payments were made by cheques and therefore, there is no justification for treating their purchases as paper transactions.

3.8 He submits that when the goods have already been exported and the same have not been seized, the question of confiscating them and offering redemption does not arise.

3.9 When exports have been made, if there is any proposal to restrict the DEPB benefit on the ground the PMV is on the lower side, the notice is required to be issued within 30 days of the export as stipulated in Circular No. 69/97- Cus. issued from file F.No. 605/51/97 -DBK dated 8.12.97. Therefore issue of show cause notice after several years proposing denial of draw back and DEPB benefits are not legal.

4.1 Learned SDR took us through the evidence relied upon and also contents of the written submissions filed by him.

4.2 None of the parties from whom the appellants claimed to have procured the goods for export or the materials required for manufacture of goods for exports was found existing. In one case, as per the report of the MCD, there was no such address even existed as was given by the appellants. This shows that the appellants have fabricated story of purchase of consignments.

4.3 The appellants have shown the premises at Parsgvanath Plaza, Delhi Road, Moradabad as a manufacturing unit. The investigation revealed that the said premises did not have any machinery and the same could not have been used for any manufacturing activity. The other evidence collected also show that there was no manufacturing activity.

4.4 The appellants have claimed export of consignments on factory stuffing basis. No permission from the jurisdictional Commissioner/ Dy. Commr have been taken for such activities.

4.5 Relying on the statement of Maya Chand Sharma ,he submits that the appellants have exported only old and used garments.

4.6 The claim for draw back is subject to satisfaction of restriction relating to PMV. As the appellants have not produced any documents substantiating procurement at a particular price, the charge of over valuation should be upheld. Therefore the denial of draw back and DEPB benefits are justified.

4.7 He also submits that separate actions were contemplated against the officers and in fact three officers were placed under suspension as duly mentioned in the affidavit before the Hon'ble High Court. Subsequently departmental action has also been taken against two of the officers.

5. We have carefully considered the submissions from both sides including written submissions and perused the records. Before taking the main issues, it would be appropriate to deal with

certain preliminary/subsidiary issues raised on behalf of the appellants.

6.1 It has been contended that the seizure effected on 14.09.98 of the consignments found misdeclared has been dealt with by separate proceeding and therefore the same is not relevant to the present proceeding. It is seen that the investigation into past exports by the appellant companies started in view of the misdeclaration detected on 14.09.98. Merely because a separate show cause notice was issued in respect of seized gods, it does not mean that the fact of seizure is not relevant to the present case. It is integrally connected inasmuch as the same exporters and the same buyer are involved in respect of past exports. Therefore the fact of seizure of misdeclared goods is certainly one of the relevant fact to be kept in mind.

6.2 It has been contended on behalf of the appellants that no show cause notices under Customs Act have been issued to the officers who examined the consignments, even though in the counter affidavit filed in November,99 by the department in the writ petition filed by the appellant it was submitted that action was being taken against the officers also for collusion. Learned DR, however, submitted that the officers concerned were suspended immediately and thereafter departmental action has been taken against Shri A.K.Arora, Superintendent and Shri Manoj Sharma, Inspector imposing penalties by way of reduction of pay in two stages for a period of three years and one month. It is thus noticed that there was departmental action against the officers. In case it was felt that there is any violation of undertaking given by the Departement before Hon'ble High Court, the same cannot be looked into in this proceeding.

6.3 A submission has been made that nothing has been done by the department till 11.7.03 when the summons were issued to the appellant director. It was also claimed that the enquiries were made by the department behind the back of the appellant and the same were not made known to them till 30.8.05 when the show cause notice was issued. This submission appears to be devoid of merits. The appellants themselves have stated that FIR was filed in this case by CBI on 29.2.2000. The documents submitted by the appellants themselves indicate that Directorate General of Vigilance, Customs and Central Excise, New Delhi referred certain issues for investigation by the CBI vide their letter dated 14.3.2000. It is also on record that a reference to Interpol has been made on 6.9.2001 and report of Interpol has been received on 29.10.2002. In other words, there are clear evidences of investigation being taken by the department or at the instance of the department prior to summoning the appellant on 11.7.03. However, such investigation need not be revealed to the appellant till the time of issue of notice.

6.4 When the appellant director was summoned on 11.7.03, he moved a writ petition before the Hon'ble High Court of Allahabad and consequent to dismissal of the writ petition on 9.10.03, he has appeared before the customs authorities and given his statement on 1.12.03 and 3.12.03. However, he has not given or was not in a position to give satisfactory replies to various questions put to him. Generally, he has taken the plea that he was not remembering names and addresses of the suppliers and in other words, he claimed that the delay has erased relevant details from his memory. Further, he has also claimed inability to produce relevant documents as they were destroyed in riots which happened in October, 99. Under these circumstances, naturally, the investigators have to look for evidence elsewhere. It is thus noticed that the customs authorities have undertaken extensive enquiries with other sources. For example, they have addressed letter dated 14.9.04 to Allahabad Bank, Moradabad and got reply dated 6.10.04. Similarly, by addressing a letter dated 26.10.04 to PNB, Meerut, they have received certain details vide reply dated 23.11.04. They have corresponded with sales tax authorises and municipal authorities. These inquires were made by the department undoubtedly behind the back of the appellants. However, there is no right vested with appellants that they should be informed of investigation undertaken against the appellants at every stage. It is not the case of the appellants that the evidences so gathered have been held back from them and action has been taken based on such evidences. The outcome of the investigation and the evidences collected have been undisputedly disclosed in show cause notice dated 30.8.05.

6.5 A submission has been made that if "the present market values" of export consignments were doubted by the customs authorities, notice was required to be issued within 30 days of export in terms of circular of the Board dated 8.12.97. This is internal administrative direction aimed at helping the genuine exporters. This circular does not prevent an investigation of alleged fraud involving export. In the present case, undisputedly, consignments attempted to be exported by the appellant company were found to be misdeclared in description and highly overvalued with a view to avail undue export benefit and the same were seized on 14.9.98. Under these circumstances, the customs authorities have undertaken extensive investigation within the country and outside the country and issued the show cause notices. This effort deserves to be appreciated. Therefore, no merits in the submission of the appellant that they have not followed Board's instruction dated 8.12.97. At any rate, we have not been shown any legal restriction prohibiting the customs authorities in issuing a show cause notice after 30 days of export.

6.6. A submission was also made that show cause notice has been issued proposing denial of drawback claim after several years. It is not a case of demand of duty under Section 28 of Customs Act. The drawback claims on goods exported during the period June to August, 1998 were held up as export attempted to be made in September,1998 was found to be misdeclared and investigations were commenced. The Customs Act envisages payment of interest in terms of Section 75A of the Customs Act in the event of delay in disbursement of drawback claims. In the present case, we find the drawback claims were held up due to the conduct of the appellants and in view of the investigation which was in progress. The delay is relevant only when the drawbacks are held admissible and the consequence is that the exporters are eligible for interest.

6.7 A submission has been made that the goods ~~the~~ exported in the past have been allowed after due examination by the Customs officers and in the absence of any charge of collusion, doubting the description and valuation of the consignments are not justified. This overlooks the fundamental fact that the customs examination is not always on cent percent basis. If there was no collusion, even due to negligence of the examining officers, the misdeclaration can go unnoticed. Undisputedly in the present case, concerned inspector and superintendent have been proceeded against departmentally and awarded punishment of reduction of pay.

7.1 Coming to the main issues, it is noticed that both the appellant companies are managed by Shri Ashwin Kumar Jain, the appellant director. In about three months, totally 58 consignments with declared value of over Rs.24 crores have been exported to the same buyer in Dubai namely M/s.Discovery General Trading LLC. The exporters claimed that most of the goods were procured from third parties and exported by them and that some of the consignments have been manufactured by them. The claim that they had manufacturing unit for manufacture of garments were found to be unsubstantiated. They had no machinery worth the name for the purpose of manufacture. They also did not produce any evidence to show that they had other infrastructure for manufacture. Therefore, their claim that some consignments were manufactured by them cannot be held to be correct. They only fall under the category of merchant exporters.

7.2 Further, the claim was that they have undertaken "packing and storage" in their factory which cannot be believed as valuable export consignments were not shown to have been received in unpacked condition from the actual manufacturer. Mere packing and storage does not make them as manufacturer entitled to get the facility of factory stuffing. The appellants have claimed that they have obtained permission for factory stuffing from the jurisdictional Assistant Commissioner but have not produced the copy of any such permission. They are only relying on a letter written by Vigilance Directorate of CBEC to CBI wherein it was mentioned some officer has given permission for factory stuffing unauthorisedly. This was an allegation which was required to be looked into by the CBI. As the appellants have claimed to have received such permission, they should have produced direct evidence of such permission.

7.3 The appellant company have exported their consignments only to one M/s.Discovery General Trading. The fact that the appellant director was one of the partners in the said buying company abroad cannot be brushed aside. The claim that Shri Ashwin Jain became partner only for the purpose of enabling him to visit the said country for the purpose of business appears to be not believable and at any rate not relevant. It is thus clear that the buyer abroad and the exporter in India are closely linked. The receipt of sale proceeds of export consignments in the past has also to be viewed in the light of this close relationship.

7.4 On behalf of the appellants, it was claimed that the goods meant for export or materials required for export production have been procured locally from 10 to 12 parties. The enquiries made by the department show that these so-called suppliers were not available in the given addresses. The submissions on behalf of the appellants that merely because the said parties were not available at the given addresses after 5-6 years, it should not concluded that they were not existing during the relevant time sound logical. However, the claim that the appellant director does not remember any of the names in spite of making substantial purchases from them is unbelievable. It is not an issue of memory loss of the appellant -director, we are concerned with but about the genuineness of transaction of purchase of goods meant for export and purchase of materials meant for export production.

7.5 Undisputedly, sanction of drawback is subject to the condition prescribed under Section 76 of the Customs Act which envisages "no drawback shall be allowed------ in respect of any goods the market price of which is less than the amount of drawback due thereon." As the appellant companies are claiming the benefit of drawback in respect of exported consignments, the onus is on them for proving that they satisfied the said condition. We find that the department has found consignments attempted to be exported by them mis-declared which were seized on 14.9.98; that they have found old and used stock of garments in the premises of the appellants; that the suppliers were found not existing in the addresses disclosed by the appellants or that the suppliers are closely related concerns; that the foreign buyer is closely related to the appellant director. In the light of these, the burden of proving that the transaction of purchase and export are genuine is squarely on the appellants. As they have miserably failed to fulfil this obligation there is justification for denial of drawback claimed by them.

7.6 The Commissioner has in detail dealt with the manner in which the payments were received in bank accounts and withdrawn; he has also dealt with the verification about the genuineness of names and addresses of the suppliers of goods to appellant company. The way the transactions have been dealt with do not show credibility especially when the suppliers were not found in the given addresses. The appellant companies were found to have been operating from common premises located at basement at Parshvnath Delhi-Road Moradabad and there was no facility of manufacturing of ready made garments. Relevant documents sought for by the investigation officers were not provided on the ground that they were all destroyed during the riot which took place in October, 99. If this is true, it is a bad luck for the appellants. In the absence any documents, without satisfying the genuineness of the transaction on which serious doubts have been raised as narrated earlier, the question of sanction of drawback overlooking the provisions of Section 76 of Customs Act does not arise.

7.7. The finding of the Commissioner that the appellants have entered fictitious and fraudulent purchase entries cannot be found unreasonable. The claim of the appellants that the Interpol report dated 29.10.02 is in their favour in certain aspects overlooks the purpose of investigation by the said agency. The report merely gives the version of Shri Naresh Kumar Jain, Indian national who was looking after M/s,Discovery General Trading that they imported only new garments from India, This statement cannot be considered to be a finding of Interpol in determining the genuineness of the claim of genuineness of exports. In view of the several discrepancies as noticed above, the claimed exports do not qualify for drawback as rightly held by the Commissioner.

7.8 The above finding in respect of export under drawback equally apply to DEPB which is another export benefit scheme.

8.1 The submission on behalf of the appellant that the goods were already exported and the goods were not seized and were not available for confiscation and therefore the question of imposing redemption fine under Section 125 of Customs Act does not arise, merits acceptance. For all practical purposes, seizure of goods involves taking over possession and confiscation involves taking over ownership. Redemption is an option granted to the owner after the ownership is taken over by confiscation. When the goods are not available, the question of confiscating and granting option of redemption does not arise. Further, we note that this is a case of export of substandard items and overvaluation of exports. Having held the charge of misdeclaration and overvaluation, the

Commissioner has chosen to impose excessive amounts as redemption fine, obviously in excess of market price. Therefore redemption fine Rs.11,89,50,027/- imposed on M/s,Sukumar Chemcials and redemption fine Rs.12,58,54,409/- imposed on M/s.Agemo Leather Components Pvt.Ltd. are to be set aside.

8.2 The DEPB scrips have been issued by the competent authority. When the investigation revealed that the export made were not in accordance with shipping bills, it would have been appropriate that references should have been made for cancellation of that DEPB scrips. The appellant company have asked for telegraphic release advice (TRA) only in respect of two DEPB scrips though they were issued totally five DEPB scsrips. The Commissioner has denied the request for TRA. The action to deny TRA without taking action to get the DEPB scrips cancelled has no meaning. There is no order on other DEPB scrips. However, it is clear that the validity of DEPB scrips was only one year and the grant of TRA has no significance as of now unless the DEPB scrips are revalidated by the DGFT authorities. In the event of any request for revalidation of DEPB scrips it would be necessary for the customs authorities to take it up for with the DGFT authorities against any such renewal if so advised.

8.3 The appellant companies and the appellant director have clearly involved themselves in exports involving misdeclaration and overvaluation rendering the goods liable for confiscation with a view to claim drawback and DEPB scrips not due and therefore they are liable to penalties. However, the penalties are very much on the higher side and requires reduction.

9. In view of the above, appeals are disposed of as follows:

(a) Rejection of drawback claims is upheld.

(b) The question of denying TRA without getting DEPB scrips cancelled is not proper and legal. However, as DEPB scrips are time expired even at the time of passing of the impugned order no order is required to be passed at this juncture.

(c) Redemption fine of Rs.11,89,50,027/- imposed on M/s.Sukumar Chemicals and Rs.12,58,54,409/- imposed on M/s.Agemo Leather Components Pvt.Ltd. on goods which are already exported and not available for confiscaton are set aside.

(d) Penalty on M/s.Sukumar Chemicals is reduced from 2,79,29,618/- to Rs.50,00,000/- (Rupees Fifty Lakhs only) and penalty imposed Agemo Leather Components Pvt.Ltd. is reduced from Rs.2,39,41,005/- to Rs.50,00,000/- (Rupees Fifty Lakhs only) and penalties imposed on Shri Ashwin Kumar reduced from Rs.5,18,70,623/- to Rs.50,00,000/- (Rupees Fifty Lakhs only).

(Pronounced in the open court on 20/06/11)

(S.S.KANG)
VICE PRESIDENT

(M.VEERAIYAN)
MEMBER (TECHNICAL)

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