

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
CUSTOMS APPEAL BRANCH

Appeal No. C/508 /2009-509 /2009 - CU[DB], C/M/368-369/2011

Date **07/07/2011**

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

To : M/S ROYAL INDUSTRIES LTD
CHANDIGARH ROAD, UCHHI MANGLI,
LUDHIANA.

M/S ROYAL INDUSTRIES LTD

Appellant

C.C.E. LUDHIANA

M.O.C/142-143/2011

Vs
Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/291-292/ 2011 CU[DB]** dated 06.07.2011
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. LUDHIANA

CENTRAL EXCISE HOUSE,
'F' BLOCK, RISHI NAGAR,
LUDHIANA 141001 (PUNJAB)

2. Adv. / Consult

MR.K.K ANAND

A-5,BASEMENT,LAJPAT NAGAR-III,
NEW DELHI - 110024

3. C.D.R

4. Bar association. CESTAT. New Delhi

5. Director Publications. Customs. Excise. I.P. Estate. New Delhi

6. M/s Centax Publications 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 (Harvana)

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. SH HARBHAJAN SINGH SANDHU
MD OF ROYAL INDUSTRIES LTD,
CHANDIGARH ROAD,
UCHHI MANGIL, LUDHIANA.


Assistant Registrar

(Customs Appeal Branch)

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
COURT NO. III**

**Date of Hearing : 26.5.2011
Date of Pronouncement: 06-07-11**

**Custom Appeal No. 508-509 of 2009 with Misc. NO. 368-369
of 2011**

[Arising out of common Order-in-Original No. 23/LDH/08 dated 19.11.2008 passed by the Commissioner of Central Excise, Ludhiana]

Coram:

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

1.	Whether Press Reporter 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?	

M/s Royal Industries Ltd.
Shri Harbhajan Singh Sandhu

Appellants

Vs.

CCE, Ludhiana

Respondent

Appearance:

Appeared for Appellant : Shri K.K. Anand, Advocate
Appeared for Respondent : Shri Sonal Bajaj, SDR

Coram:

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

Misc order No. C/142-143/11
Final Order No. C/291-292/11 dated 6.7.11

Per Mathew John:

The main Appellant is a 100% Export Oriented Unit. The second Appellant is a Director of the main Appellant company. They

were importing raw materials like polyester yarn, polyester fabrics, woollen yarn, synthetic waste, acrylic fibre and acrylic tow without payment of duty under Notification No. 53/97-Cus dated 3.6.97 subject to the undertaking that the conditions stipulated in the notification would be fulfilled. They executed a bond dated 11.7.2000 to support the undertaking given.

2. The case made out against the Appellants is that 26 Bills of Entry were filed during 2002 at Nhava Sheva Customs House, Mumbai for import of such raw materials. The Appellants are alleged to have bought these goods from various importers who allegedly sold these goods on high sea sale basis to the Appellant. On verification of the records of the factory of the Appellant the goods imported under the said Bills of Entry were not reflected in the registers maintained by the main Appellant. Therefore, the Revenue alleged that these goods were diverted by the Appellants for sale in the market without payment of customs duty thereon. A show cause notice was issued demanding customs duty to the tune of Rs.2,53,07,032/- on the goods covered by the said 26 Bills of Entry along with applicable interest. There was a proposal to hold that the goods imported by the said Bills of Entry are liable to confiscation under Section 111(o) of the Customs Act and to impose penalty under Section 114A and Section 112(a) of the Customs Act, 1962.

3. The defence of the Appellants before the Adjudicating Authority was that they did not file the impugned 26 Bills of Entry. They have not paid any amount for the goods imported by the said Bills of Entry and they had nothing to do with the imports except that some negotiations were going on with some parties for purchase of such items and they were in the process of arranging funds for purchasing such goods.

4. After hearing the submissions briefly for the Appellant and for Revenue, we scrutinised the order in original to find out evidence, if any, which may even remotely indicate that the Appellants had actually filed 26 impugned Bills of Entry. The only points that we could notice is that the Bills of Entries were filed in their name and further, as per paragraph 1.5 of the order, Revenue had specific information regarding selling/diverting of duty free imported raw material by the Appellants in the open market. There is no other evidence which would show that the Bills of Entry were actually filed by the Appellant. Rest of the allegation is listed on the presumption that these Bills of Entry were actually filed by the Appellant. The Show Cause Notice goes on to make allegation that the goods imported were not entered in the raw material register and the receipt of the goods in the factory were not intimated to the department and so on which will be the obvious position if the Appellant had not imported the goods and filed Bills of Entry. In the reply furnished by the Appellant at the time of adjudication, there is little more nexus coming out because they

admitted that they were holding negotiations with few parties for purchasing the impugned goods and also that they tried to arrange funds for such purchase.

5. There is also an admission that they had intimated the clearing agent M/s Aren Shipping Agency over telephone regarding their intention to engage them for clearance of the goods after receiving the original documents from the sellers. According to the Appellant, the deal was not finalised and they had not paid any amount for the said goods to the actual sellers. According to the Appellant, the goods were actually cleared by the parties who are supposed to have sold the goods on high seas by filing Bills of Entry using the name of the Appellant. The case record does not show any investigation on this allegation.

6. The Appellants persistently asked for copies of impugned Bills of Entries. These were not given to them. So they could not demonstrate that the Bills of Entries were not filed by them.

7. We have considered arguments on both sides and the evidence listed in the impugned order. We have not seen any reliable evidence by which we can conclude that the impugned Bills of Entry were filed by the Appellant and the goods were cleared by the Appellants. The fact that the Revenue had specific information about diverting the duty free raw material by the Appellant is not a sufficient evidence to confirm the duty

demanded. Thus we have come to the conclusion that the entire case is made without any evidence. So we set aside the orders with consequent relief, if any.

(Pronounced in open Court on.....06-07-11.....)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)

RM