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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/198 /2006 - CU[DB]  Date **11/07/2011**

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

To :
SUSHANT AGRAWAL
E-9, PANCHSHEEL PARK, NEW DELHI

**SUSHANT AGRAWAL** Appellant
Vs
**COMMISSIONER OF CUSTOMS (PREVENTIVE)** Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/315/ 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
**COMMISSIONER OF CUSTOMS (PREVENTIVE)**
NEW CUSTOM HOUSE, NEW
DELHI

2. Adv. / Consult
**MR.PIYUSH KUMAR,ADV**
**B-25, LAJPAT NAGAR-III,**
**NEW DELHI – 110 024.**

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)

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

**C/Appeal No.198/** 2006

(Arising out of order in appeal No.10/Comm/05 dated 23.12.2005 passed by the Commissioner of Customs (Prev), 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? No
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? Yes

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M/s Sushant Agarwal — Appellants

Vs

CC, New Delhi — Respondent

Appeared for the Appellant: Shri Piyush Kumar, Advocate
Appeared for the Respondent: Shri Sheo Narayan Singh, Jt CDR

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

Final ORDER No. C/315/11

Per Archana Wadhwa:

As per facts on record, the appellant is sole proprietor of various firms under the name and style of M/s Vaibhav Textiles, M/s S.R. Textiles, M/s Om Textiles, M/s Hanuman Trading Co etc. These firms are engaged in import of fabrics, PVC leather cloth, PU Leather under DEEC Scheme against Advance licenses.

2. The premises of the said firm located at D-60, Okhla Industrial Area, Delhi were put to search by DRI officers on 29.9.03 and 30.9.2003. The fabrics were seized from their place. As the appellants could not produce documents in respect of some lots of fabrics, the same were seized. In the course of post investigation, statement of appellant as also of various persons were recorded. After due adjudication, the impugned order stands passed by the Commissioner of Customs (Prev.) confiscating the seized fabrics with an option to the appellant to redeem the same on payment of fine of Rs. 13 lakhs. In addition, penalty of Rs. 12 lakhs stand imposed on the appellant.

3. We are not going into the details of statements of various persons recorded by the officers during the course of investigation. As we find that the Commissioner, while passing the impugned order, has not accepted the bills of entries produced by the appellants under the cover of which they have claimed to have imported the fabrics. Though we find that in some of the cases, the Commissioner has dealt with the bills of entries and has given a finding that the description of the goods mentioned therein does

not tally with the goods seized by the officers, he has rejected some of the bills of entries on the short ground that the same were not produced before the authorities at the time of seizure. He has also refused to look into the bills of entry on the ground that the same belong to M/s Vaibhav Textiles, Gurgaon whereas the goods stands seized from the appellant's godown at Delhi. The appellants have not produced any document i.e ledger etc for the said Gurgaon unit to show receipt and clearance of the goods from the premises of Vaibhav Textiles. He has also rejected the appellant's contention that the bills of entries showing ~~illicit~~ licit import of the seized goods stands retrieved by the appellants from the seized documents. As such, he has rejected the appellant's contention that the said documents were culled out from the records as an after thought and made up story concocted by themselves to save themselves from the clutches of law. He has also rejected the said bills as ~~also~~ CHA statement recorded during the course of investigation are ~~in-culpating~~ inculpatory admitting the mis-declaration of the fabrics imported by them as regards quality and value. Accordingly, he has held that "in the circumstances, I am unable to accept the documents viz. B.E which were not submitted at the time of search and during investigation but submitted by him after issue of show cause notice as the document of ~~illicit~~ licit import."

4. Countering the reasoning of the learned Authority, the learned Advocate appearing for appellants submitted that the ground ~~admitted~~ adopted by the Commissioner for rejection of bills of entry are not in consonance with the principles of natural justice. Merely

because the documents could not be produced before the investigating authority by itself, cannot be made ~~as~~ a justifiable reason for rejecting the same. Similarly, the documents showing the address of the importer as Gurgaon cannot be rejected on the ground that the fabrics were lying in Delhi Godown. He has further submitted that bill of entry produced by them stands rejected by the adjudicating authority on the ground that whereas the bill of entry showed the imported fabrics in rolls ~~whereas~~ the same have been found in cartons. The learned Advocate submits that they had contended before the adjudicating authority that the goods were subsequently repacked in cartons and the said fact by itself cannot lead to inevitable conclusion that the goods were not covered by bills of entry.

5. Without going in the merits of the case, we agree with the learned Advocate reasons for rejection of documentary evidence on the ground that the same were not produced before the visiting officers and the statements of various persons are to the contrary ~~on the similar ground~~, cannot be upheld. It is settled principal of judicial prudence that documents speak ~~leader~~ louder than the oral evidence. As such we are of the view that the adjudicating authority was duty ~~bout~~ bound to examine the said documents produced by the appellants. Similarly, their contention that the same were subsequently retrieved by them from the resumed documents is required to be looked into. Further the rejection of such documents on the ground that they reflected the address of the imported firm as that of Gurgaon whereas the goods were found in

Delhi, cannot be held to be a valid ground. As such, we are of the view that the matter needs to go back to the adjudicating authority for ~~examine~~ examining the said bills of entry produced by them in support of their claim on merits of ~~fabrication~~ fabrics having been imported under the cover of the same. For the said purposes, we set aside the impugned order and remand the matter to the Commissioner for de-novo adjudication in the light of the observations made by us as above. We make it clear that we have not expressed any opinion on the merits of the case and it shall be open to the appellants to put forth their pleas on various grounds. Needles to say that the appellants should be given opportunity to put forth their case in writing as well as in person. As the matter is quite old, we expect the Commissioner to complete the adjudication proceedings as early as possible. The appellant ~~would~~ should also cooperate with the Revenue. The appeal is thus allowed by way of remand.

(Order dictated and pronounced in the open Court.)

(ARCHANA WADHWA)
Member (Judicial)

(MATHEW JOHN)
Technical Member

MPS*