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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

Date 24/08/2011

Appeal No. C/559 /2007 - CU[DB]

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

To :
C.C.E. NOIDA
C-56/42, SECTOR-62, NOIDA-201307

C.C.E. NOIDA Appellant
Vs
M/S PRAKASH FREIGHT MOVERS LTD. Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/361/ 2011 CU|DB|** dated 08.08.2011 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
M/S PRAKASH FREIGHT MOVERS LTD.
C-130,FIRST FLOOR,NARAINA INDUSTRIAL
AREA PHASE-I,NEW DELHI-110028.

2. Adv. / Consult MR. PIYUSH KUMAR,
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 Registra
(Customs Appeal Branc

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

Customs Appeal No.559 of 2007

(Arising out of Order-in-Original no.22/Commr/07 dt.25.4.2007 passed by the Commissioner of Customs, & Central Excise,Noida)

Date of Hearing/Decision: 03.08.2011

For approval and signature:
Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, 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?	No
2	Whether it should 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 Departmental authorities?	Yes.

CC & CE, Noida — Appellant

Vs.

M/s.Prakash Freight Movers Limited — Respondent

Present for the Appellant: Shri R.k.Gupta, SDR
Present for the Respondent: Shri Piyush Kumar, Advocate

Coram: Hon'ble Mrs.Archana Wadhawa, Member (Judicial)
Hon'ble Mr.Mathew John, Member (Technical)

Final **ORDER NO.** C/361/11

PER: ARCHANA WADHAWA

Being aggrieved with the order passed by the Commissioner, Revenue has filed the present appeal.

2. We have heard Shri R.K.Gupta, learned SDR and Shri Piyush Kumar, learned Advocate appeared for the respondents.

3. As per the facts on records, the respondents are holder of CHA licence from 1991 onwards. They have filed bill of entry on 2.11.2005 for clearance of consignment imported by M/s.Honey Hersh Impex. In the bill of entry the description of imported goods was given as "used cylinder blocks". They also submitted a certificate dated 'nil' issued by one charted engineer, namely, Shri Pradeep Kumar Sharma. The chartered engineer certified that the imported consignment consisted of 83 pcs. "used cylinder blocks" of Nissan and Toyota and the cylinder blocks are "old/used and not complete and cannot be used as such". In the certificate he also certifies that 20% of the consignment may be used as component of diesel engines in reconditioning and balance 80% are not to be used as pare parts and have to be melted as cast iron scrap.

4. On examination of the consignment by the customs officers, it was revealed tht the goods in fact were "TOYOTA" & "NISSAN" BRAND "old and used diesel engine" of Japan origin. As the imported consignment was different from the goods declared in the bill of entry, market enquiry was conducted to ascertain the actual facts.

5. Based on physical examination report and market enquiries, it was concluded that the goods were mis-declared by the importer in connivance with the CHA and hence the value declared by the importer could not be taken as the value for the purpose of assessment of goods imported under the said bill of entry. The issue

of valuation was decided by the Joint Commissioner (Customs), ICD Dadri vide his order-in-original NO.01/2005/JC/(Cus/ICD Dadri) dated 23.11.05 wherein he rejected the declared value and arrived at the fresh value and confirmed the demand of the differential duty based on the reassessment and imposed penalty upon the importer, chartered engineer and CHA.

6. On the above basis, the proceedings were also initiated by way of issue of show cause notice dated 20.8.2007 proposing revocation of their CHA licence under the provisions of Regulation 22 of the CHALR'2004 and for imposing penalty under Section 117 of Customs Act, 1962. The show cause notice stands adjudicated by the Commissioner, vacating the same and dropping the proceedings against the respondents. Hence, the present appeal by the Revenue.

7. The adjudicating authority has observed that in terms of para 23 of chapter 3 of the CBEC's Customs Manual of Instructions, all imported goods are required to be examined for verification of correctness of description given in the bill of entry. In the instant case, the CHA i.e. respondent had requested for first check i.e. examination of goods before assessment, as they were not sure about the contents of cargo. Enquiry report submitted by the Assistant Commissioner does not rebut the above contention of the CHA. As such, he has concluded that when the CHA himself requested for the examination of the goods, it cannot be said that he has not fulfilled the obligation cast upon them in terms of provisions of CHALR'2004. As such, he concluded that merely because the

chartered engineer has given wrong certification about the description of the goods, CHA cannot be penalized for wrong doing of another person when he himself came forward and requested for the first check. He has accordingly held that the revocation of licence can be only in some exceptional cases. He has relied on the various decision of the Tribunal to support his above view.

8. On the other hand, the Revenue in the memo of appeal have submitted that as per the statement of chartered engineer that the CHA was requested to show the permission for inspection ~~stands~~ obtained ~~by~~ from the customs department. It has been contended that the examination by the chartered engineer was not authorised by the customs department and was done at the personal behest of the CHA with the sole intention of misleading the department. As the CHA was present at the time of examination of the goods by the chartered engineer, he was very much aware that the certificate was being given by the chartered engineer without actual inspection by the department. As such they have made prayer for setting aside the impugned order.

9. After considering the submissions made by both sides, and after appreciating the arguments advanced, we note that the Revenue in their memo of appeal have no where contested the finding of the Commissioner that it was the CHA himself who had asked the department to exercise first check. If the intention of the CHA was to facilitate clearance of the goods by misdeclar ing the same, he would not have requested for first check. In that scenario,

we find no infirmity in the view taken by the Commissioner. Otherwise also, we find that no independent evidence reflecting upon any malafide intention on the part of CHA in procuring the wrong certificate from the chartered engineer is available. Statement of Shri Pradeep Kumar Sharma, chartered engineer, deposing that he requested the CHA to show the permission for inspection of the cargo from the customs department and for giving the certificate, cannot be relied upon as the sole factor, without any independent corroboration, inasmuch as the chartered engineer himself was a noticee in the proceeding under the Customs Act. There is no independent evidence available on record indicating any malafide on the part of the CHA.

10. Learned Advocate appearing for the CHA also submitted that he is holder of licence form 1991 onwards and no allegation of misconduct stands attributed to him or any proceedings stands initiated against him. He is still continuing the business of CHA and no contraventions have been found against him. As regard penalty imposed upon him under the Customs Act, during the earlier proceeding, which stands accepted by him. Learned Advocate clarified that the penalty was not under section 112 of the Customs Act, but was under Section 117 of the said Act. Inasmuch as a small amount of penalty was involved, he did not contest the penalty and the same was paid. This fact cannot lead to acceptance of any contraventions on his part and cannot be made a ground for revocation of his licence.

11. We agree with the above contention of the learned Advocate. There being no evidence against the CHA, we find that the impugned order dropping the proceedings against the CHA is not required to intervened. Accordingly, we reject the appeal filed by the Revenue.

(Pronounced in the open court)

(ARCHANA WADHAWA)
MEMBER (JUDICIAL)

(MATHEW JOHN)
MEMBER (TECHNICAL)

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