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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/690 /2007 - CU[DB]

Date **12/09/2011**

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

To :
M/S JAGDAMBA TIN SUPPLIERS

KN-B/11, GALI NO 10,
UPPER ANAND PARBAT, NEW DELHI

M/S JAGDAMBA TIN SUPPLIERS Appellant

Vs

C.C. (ICD) NEW DELHI Respondent

I am directed to transmit herewith a certified copy of **Final order No.C/399/ 2011 CU[DB]** dated 07.09.2011 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. (ICD) NEW DELHI
ICD, TUGHLAKABAD,
NEW DELHI 110020.

2. Adv. / Consult
MR.L.P. ASTHANA & MS REENA KHAIR
R-163, SECOND FLOOR, 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)

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

Date of Hearing : 18.8.2011

Custom Appeal No. 690 of 2007

[Arising out of Order-in-Appeal No. CC(A)/Cus/86/ICD/D-II/07 dated 18.7.2007 passed by the Commissioner of Customs (Appeals), New Delhi]

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?	Yes
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 Whether their Lordships wish to see the fair copy of the order?	Seen
4.	Whether order is to be circulated to the Department Authorities?	NO

M/s Jagdamba Tin Suppliers — Appellants

Vs.

CC, New Delhi — Respondent

Appearance:

Appeared for Appellant : Shri L.P. Asthana, Advocate

Appeared for Respondent : Shri Sunil Kumar, SDR

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

Final Order No. C/399/11 dated 7.9.11

Per **Mathew John:**

The Appellant imported goods declared as "Prime Tin Plate Sheets" in Bill of Entry 493471 dated 21-03-06. At that time and submitted invoice showing price of US$ 700 PMT. The assessable value as per declaration was Rs. 16, 23,286/-. At the relevant time the Customs duty rate applicable for prime quality tin plate was 5% whereas the rate applicable for second grade was 20%. On examination the goods were found to be unevenly wound, having dent and rust marks and Revenue was of the view that the goods are not of prime grade. The Appellant accepted the fact the goods were of second grade and agreed for adjudication of the matter without issue of formal Show Cause Notice. Because of the mis-declaration the goods were confiscated under section 111 (d) and (m) of the Customs Act with option to redeem the goods on payment of fine of Rs. 3,00,000/-. Further a penalty of Rs. 1,50,000/ was imposed under section 112 of the Customs Act. The Appellant cleared the goods on payment of higher rate of duty and the fine and penalty adjudged in adjudication.

2. Later the Appellant filed an Appeal with Commissioner (Appeal) on the ground that the value declared in the Bill of Entry was that for prime quality and since the goods were found to be of second grade the Revenue should have made adjustment in the value of the goods. They submit that the supplier had made a mistake in despatching goods of wrong quality and supplier had agreed to send them a credit note. The Appellants also plead that the fine and penalty imposed is very high because they had already paid duty at higher rate and for higher value and they should not be penalized for the mistake of the

supplier. The Commissioner (Appeal) rejected the Appeal. Aggrieved by the order of the Commissioner (Appeal) Appellant has filed this appeal.

3. The main grounds for Appeal is that the value of tin plates of secondary quality was only $465 PMT at that time. They have submitted a few copies of the Bills of Entries of imports made by other importers during the relevant period. They plead that this is a mistake of the supplier and they should not be penalized for the mistake of the supplier. There is also a pleading that they on their own had asked for examination of goods before assessment indicating that they had nothing to hide. It is further submitted that since they have paid duty at the higher rate and higher value there is no reason to impose such high penalty. They submit that they have been able to recover only Rs. 20.46 lakhs as sale price of the goods.

4. The Ld. DR points out that, the transaction value declared cannot be reduced. He also points out that the Appellant is only saying that they will produce credit note as and when issued by the supplier and this is not a bonafide statement. He submits that the redemption fine imposed is slightly less than 20% of the assessable value and hence very reasonable. He also states that the entire sequence of events shows that the goods were described in the invoices as prime

grade only to get concessional rate of duty and therefore the personal penalty imposed is justifiable.

5. We have considered arguments on both sides.

6. We are not able to agree with the prayer for reduction of assessable value because the goods were assessed on the basis of transaction value declared by the importer. Amendments in documents filed with customs are to be allowed in the discretion of the proper officer subject his satisfaction that the amendment is for bonafide reasons. The facts of the case do not suggest a bonafide mistake. So the prayer for reduction in assessable value is rejected.

7. We are also not impressed by the argument that this is a case where the supplier made a mistake. The facts and circumstances of the case would indicate that the goods were invoiced as prime grade just to claim the benefit of lower customs duty. Even the claim that they on their own asked for examination before assessment is not evidenced from order-in-original. Such mis-declaration would warrant confiscation of goods under section 111(m) of the Customs Act and penalty under section 112 of the Customs Act.

8. However we note that the gain that the importer was planning to make stands negated substantially due to payment of duty at higher rate of duty on higher value and there is a case for reduction in the redemption fine and penalty. Accordingly, we reduce the fine to Rs.75,000/- (Rupees Seventy Five Thousand only) and penalty to Rs. 50,000/-(Rupees Fifty Thousand only).

9. The Appeal is allowed partially.

(Pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Mathew John)
Member (Technical)